

# Fundamentals of Construction Contracts in California:

*Understanding the Issues*

Santa Ana, CA      February 7, 2014

## **BASIC CONTRACT PRINCIPLES SUPPLEMENTAL MATERIALS**



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- Selected Statutes
- Recently Enacted Legislation
- Matrix with Comparison of Old Laws v. Revised Statutes

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*Business Law for the Business Person*

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## **SELECTED STATUTES**



*Business Law for the Business Person*

## **SELECTED STATUTES AND RECENTLY ENACTED LEGISLATION:**

**February 7, 2014**

### **Business and Professions Code Sections**

#### **§7108.5**

(a) A prime contractor or subcontractor shall pay to any subcontractor, not later than seven days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.(b) Any violation of this section shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made.(c) In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.(d) The sanctions authorized under this section shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal.(e) This section applies to all private works of improvement and to all public works of improvement, except where Section 10262 of the Public Contract Code applies.

#### **§7108.6**

A licensed contractor is required to pay all transportation charges submitted by a duly authorized motor carrier of property in dump truck equipment by the 20th day following the last day of the calendar month in which the transportation was performed, if the charges, including all necessary documentation, are submitted by the fifth day following the last day of the calendar month in which the transportation was performed. The payment shall be made unless otherwise agreed to in writing by the contractor and by the duly authorized motor carrier of property in dump truck equipment. In the event that there is a good faith dispute over a portion of the charges claimed, the contractor may withhold payment of up to 150 percent of the disputed amount or an amount otherwise agreed to by the parties. A violation of this section constitutes a cause for disciplinary action under Section 7120 and shall also subject the contractor licensee to a penalty, payable to the carrier, of 2 percent of the amount due per month for every month that payment is outstanding. In an action for the collection of moneys not paid in accordance with this section, the prevailing party shall be entitled to his or her attorney's fees and costs. This section applies to all private works of improvement and to all public works of improvement.

### **Selected Civil Code Sections**

#### **§1633.1**

This title may be cited as the Uniform Electronic Transactions Act.

#### **§1633.2**

In this title the following terms have the following definitions: (a) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction. (b) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction. (c) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result. (d) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this title and other applicable law. (e) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. (f) "Electronic agent" means a computer program

or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review by an individual. (g) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means. (h) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record. (i) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state. (j) "Information" means data, text, images, sounds, codes, computer programs, software, data bases, or the like. (k) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information. (l) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity. (m) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. (n) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures. (o) "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

### **§1633.3**

(a) Except as otherwise provided in subdivisions (b) and (c), this title applies to electronic records and electronic signatures relating to a transaction. (b) This title does not apply to transactions subject to the following laws: (1) A law governing the creation and execution of wills, codicils, or testamentary trusts. (2) Division 1 (commencing with Section 1101) of the Uniform Commercial Code, except Sections 1206 and 1306. (3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9 (commencing with Section 9101), and 11 (commencing with Section 11101) of the Uniform Commercial Code. (4) A law that requires that specifically identifiable text or disclosures in a record or a portion of a record be separately signed, including initialed, from the record. However, this paragraph does not apply to Section 1677 or 1678 of this code or Section 1298 of the Code of Civil Procedure. (c) This title does not apply to any specific transaction described in Section 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7, or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, or 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.5, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of, Section 3071.5 of, Part 5 (commencing with Section 4000) of Division 4 of, or Part 5.3 (commencing with Section 6500) of Division 4 of this code, subdivision (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 662, paragraph (2) of subdivision (a) of Section 663, 664, 667.5, 673, 677, paragraph (2) of subdivision (a) of Section 678, subdivisions (a) and (b) of Section 678.1, Section 786, 10113.7, 10127.7, 10127.9, 10127.10, 10192.18, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, 10509.7, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may not be substituted for any notice that is required to be sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this subdivision shall be construed to prohibit the recordation of any document with a county recorder by electronic means. (d) This title applies to an electronic record or electronic signature otherwise excluded from the application of this title under subdivision (b) when used for a transaction subject to a law other than those specified in subdivision (b). (e) A transaction subject to this title is also subject to other applicable substantive law. (f) The exclusion of a transaction from the application of this title under subdivision (b) or (c) shall be construed only to exclude the transaction from the application of this title, but shall not be construed to prohibit the transaction from being conducted by electronic means if the transaction may be conducted by electronic means under any other applicable law. (g) This section shall

remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

#### **§1633.4**

This title applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after January 1, 2000.

#### **§1633.5**

a) This title does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This title applies only to a transaction between parties each of which has agreed to conduct the transaction by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct. Except for a separate and optional agreement the primary purpose of which is to authorize a transaction to be conducted by electronic means, an agreement to conduct a transaction by electronic means may not be contained in a standard form contract that is not an electronic record. An agreement in such a standard form contract may not be conditioned upon an agreement to conduct transactions by electronic means. An agreement to conduct a transaction by electronic means may not be inferred solely from the fact that a party has used electronic means to pay an account or register a purchase or warranty. This subdivision may not be varied by agreement. (c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. If a seller sells goods or services by both electronic and nonelectronic means and a buyer purchases the goods or services by conducting the transaction by electronic means, the buyer may refuse to conduct further transactions regarding the goods or services by electronic means. This subdivision may not be varied by agreement. (d) Except as otherwise provided in this title, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this title of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

#### **§1633.6**

This title shall be construed and applied according to all of the following: (1) To facilitate electronic transactions consistent with other applicable law. (2) To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices. (3) To effectuate its general purpose to make uniform the law with respect to the subject of this title among states enacting it.

#### **§1633.7**

(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form. (b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation. (c) If a law requires a record to be in writing, an electronic record satisfies the law. (d) If a law requires a signature, an electronic signature satisfies the law.

#### **§1633.8**

(a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, that requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record. (b) If a law other than this title requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, all of the following rules apply: (1) The record shall be posted or displayed in the manner specified in the other law. (2) Except as otherwise provided in paragraph (2) of subdivision (d), the record shall be sent, communicated, or transmitted by the method specified in the other law. (3) The record shall contain the information formatted in the manner specified in the other law. (c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient. (d) The requirements of this section may not be varied by agreement, except as follows: (1) To the extent a law other than this title requires information to be provided, sent, or

delivered in writing but permits that requirement to be varied by agreement, the requirement under subdivision (a) that the information be in the form of an electronic record capable of retention may also be varied by agreement. (2) A requirement under a law other than this title to send, communicate, or transmit a record by first-class mail may be varied by agreement to the extent permitted by the other law.

#### **§1633.9**

(a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable. (b) The effect of an electronic record or electronic signature attributed to a person under subdivision (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

#### **§1633.10**

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply: (1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record. (2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, all of the following conditions are met: (i) The individual promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person. (ii) The individual takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record. (iii) The individual has not used or received any benefit or value from the consideration, if any, received from the other person. (3) If neither paragraph (1) nor (2) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any. (4) Paragraphs (2) and (3) may not be varied by agreement.

#### **§1633.11**

(a) If a law requires that a signature be notarized, the requirement is satisfied with respect to an electronic signature if an electronic record includes, in addition to the electronic signature to be notarized, the electronic signature of a notary public together with all other information required to be included in a notarization by other applicable law.

(b) In a transaction, if a law requires that a statement be signed under penalty of perjury, the requirement is satisfied with respect to an electronic signature, if an electronic record includes, in addition to the electronic signature, all of the information as to which the declaration pertains together with a declaration under penalty of perjury by the person who submits the electronic signature that the information is true and correct.

#### **§1633.12**

(a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record, if the electronic record reflects accurately the information set forth in the record at the time it was first generated in its final form as an electronic record or otherwise, and the electronic record remains accessible for later reference. (b) A requirement to retain a record in accordance with subdivision (a) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received. (c) A person may satisfy subdivision (a) by using the services of another person if the requirements of subdivision (a) are satisfied. (d) If a law requires a record to be retained in its original form, or provides consequences if the record is not retained in its original form, that law is satisfied by an electronic record retained in accordance with subdivision (a). (e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subdivision (a).

(f) A record retained as an electronic record in accordance with subdivision (a) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date

of this title specifically prohibits the use of an electronic record for a specified purpose. (g) This section does not preclude a governmental agency from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

#### **§1633.13**

In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

#### **§1633.14**

(a) In an automated transaction, the following rules apply: (1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements. (2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance. (b) The terms of the contract are determined by the substantive law applicable to it.

#### **§1633.15**

(a) Unless the sender and the recipient agree to a different method of sending that is reasonable under the circumstances, an electronic record is sent when the information is addressed properly or otherwise directed properly to the recipient and either (1) enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender, or (2) enters a region of an information processing system that is under the control of the recipient. (b) Unless the sender and the recipient agree to a different method of receiving that is reasonable under the circumstances, an electronic record is received when the electronic record enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent, in a form capable of being processed by that system, and from which the recipient is able to retrieve the electronic record. (c) Subdivision (b) applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subdivision (d). (d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business or, if the recipient is an individual acting on his or her own behalf, at the recipient's place of residence. For purposes of this subdivision, the following rules apply: (1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction. (2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be. (e) An electronic record is received under subdivision (b) even if no individual is aware of its receipt. (f) Receipt of an electronic acknowledgment from an information processing system described in subdivision (b) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received. (g) If a person is aware that an electronic record purportedly sent under subdivision (a), or purportedly received under subdivision (b), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, this subdivision may not be varied by agreement.

#### **§1633.16**

If a law other than this title requires that a notice of the right to cancel be provided or sent, an electronic record may not substitute for a writing under that other law unless, in addition to satisfying the requirements of that other law and this title, the notice of cancellation may be returned by electronic means. This section may not be varied by agreement.

#### **§1633.17**

No state agency, board, or commission may require, prohibit, or regulate the use of an electronic signature in a transaction in which the agency, board, or commission is not a party unless a law other than this title expressly authorizes the requirement, prohibition, or regulation.

**§1639**

When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however, to the other provisions of this Title.

**§1651**

Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and the particular contract in question, the written parts control the printed parts, and the parts which are purely original control those which are copied from a form. And if the two are absolutely repugnant, the latter must be so far disregarded.

**§1654**

In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.

**§1698**

(a) A contract in writing may be modified by a contract in writing. (b) A contract in writing may be modified by an oral agreement to the extent that the oral agreement is executed by the parties. (c) Unless the contract otherwise expressly provides, a contract in writing may be modified by an oral agreement supported by new consideration. The statute of frauds (Section 1624) is required to be satisfied if the contract as modified is within its provisions. (d) Nothing in this section precludes in an appropriate case the application of rules of law concerning estoppel, oral novation and substitution of a new agreement, rescission of a written contract by an oral agreement, waiver of a provision of a written contract, or oral independent collateral contracts.

**§2782**

(a) Except as provided in Sections 2782.1, 2782.2, 2782.5, and 2782.6, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract and that purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants, or independent contractors who are directly responsible to the promisee, or for defects in design furnished by those persons, are against public policy and are void and unenforceable; provided, however, that this section shall not affect the validity of any insurance contract, workers' compensation, or agreement issued by an admitted insurer as defined by the Insurance Code. (b) (1) Except as provided in Sections 2782.1, 2782.2, and 2782.5, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract with a public agency entered into before January 1, 2013, that purport to impose on the contractor, or relieve the public agency from, liability for the active negligence of the public agency are void and unenforceable. (2) Except as provided in Sections 2782.1, 2782.2, and 2782.5, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract with a public agency entered into on or after January 1, 2013, that purport to impose on any contractor, subcontractor, or supplier of goods or services, or relieve the public agency from, liability for the active negligence of the public agency are void and unenforceable. (c) (1) Except as provided in subdivision (d) and Sections 2782.1, 2782.2, and 2782.5, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract entered into on or after January 1, 2013, with the owner of privately owned real property to be improved and as to which the owner is not acting as a contractor or supplier of materials or equipment to the work, that purport to impose on any contractor, subcontractor, or supplier of goods or services, or relieve the owner from, liability are unenforceable to the extent of the active negligence of the owner, including that of its employees. (2) For purposes of this subdivision, an owner of privately owned real property to be improved includes the owner of any interest therein, other than a mortgage or other interest that is held solely as security for performance of an obligation. (3) This subdivision shall not apply to a homeowner performing a home improvement project on his or her own single family dwelling. (d) For all construction contracts, and amendments thereto, entered into after January 1, 2009, for residential construction, as used in Title 7 (commencing with Section 895) of Part 2 of Division 2, all provisions, clauses, covenants, and agreements



contained in, collateral to, or affecting any construction contract, and amendments thereto, that purport to insure or indemnify, including the cost to defend, the builder, as defined in Section 911, or the general contractor or contractor not affiliated with the builder, as described in subdivision (b) of Section 911, by a subcontractor against liability for claims of construction defects are unenforceable to the extent the claims arise out of, pertain to, or relate to the negligence of the builder or contractor or the builder's or contractor's other agents, other servants, or other independent contractors who are directly responsible to the builder, or for defects in design furnished by those persons, or to the extent the claims do not arise out of, pertain to, or relate to the scope of work in the written agreement between the parties. This section shall not be waived or modified by contractual agreement, act, or omission of the parties. Contractual provisions, clauses, covenants, or agreements not expressly prohibited herein are reserved to the agreement of the parties. Nothing in this subdivision shall prevent any party from exercising its rights under subdivision (a) of Section 910. This subdivision shall not affect the obligations of an insurance carrier under the holding of *Presley Homes, Inc. v. American States Insurance Company* (2001) 90 Cal.App.4th 571. Nor shall this subdivision affect the obligations of a builder or subcontractor pursuant to Title 7 (commencing with Section 895) of Part 2 of Division 2. (e) Subdivision (d) does not prohibit a subcontractor and builder or general contractor from mutually agreeing to the timing or immediacy of the defense and provisions for reimbursement of defense fees and costs, so long as that agreement does not waive or modify the provisions of subdivision (d) subject, however, to paragraphs (1) and (2). A subcontractor shall owe no defense or indemnity obligation to a builder or general contractor for a construction defect claim unless and until the builder or general contractor provides a written tender of the claim, or portion thereof, to the subcontractor which includes all of the information provided to the builder or general contractor by the claimant or claimants, including, but not limited to, information provided pursuant to subdivision (a) of Section 910, relating to claims caused by that subcontractor's scope of work. This written tender shall have the same force and effect as a notice of commencement of a legal proceeding. If a builder or general contractor tenders a claim for construction defects, or a portion thereof, to a subcontractor in the manner specified by this provision, the subcontractor shall elect to perform either of the following, the performance of which shall be deemed to satisfy the subcontractor's defense obligation to the builder or general contractor: (1) Defend the claim with counsel of its choice, and the subcontractor shall maintain control of the defense for any claim or portion of claim to which the defense obligation applies. If a subcontractor elects to defend under this paragraph, the subcontractor shall provide written notice of the election to the builder or general contractor within a reasonable time period following receipt of the written tender, and in no event later than 90 days following that receipt. Consistent with subdivision (d), the defense by the subcontractor shall be a complete defense of the builder or general contractor of all claims or portions thereof to the extent alleged to be caused by the subcontractor, including any vicarious liability claims against the builder or general contractor resulting from the subcontractor's scope of work, but not including claims resulting from the scope of work, actions, or omissions of the builder, general contractor, or any other party. Any vicarious liability imposed upon a builder or general contractor for claims caused by the subcontractor electing to defend under this paragraph shall be directly enforceable against the subcontractor by the builder, general contractor, or claimant. (2) Pay, within 30 days of receipt of an invoice from the builder or general contractor, no more than a reasonable allocated share of the builder's or general contractor's defense fees and costs, on an ongoing basis during the pendency of the claim, subject to reallocation consistent with subdivision (d), and including any amounts reallocated upon final resolution of the claim, either by settlement or judgment. The builder or general contractor shall allocate a share to itself to the extent a claim or claims are alleged to be caused by its work, actions, or omissions, and a share to each subcontractor to the extent a claim or claims are alleged to be caused by the subcontractor's work, actions, or omissions, regardless of whether the builder or general contractor actually tenders the claim to any particular subcontractor, and regardless of whether that subcontractor is participating in the defense. Any amounts not collected from any particular subcontractor may not be collected from any other subcontractor. (f) Notwithstanding any other provision of law, if a subcontractor fails to timely and adequately perform its obligations under paragraph (1) of subdivision (e), the builder or general contractor shall have the right to pursue a claim against the subcontractor for any resulting compensatory damages, consequential damages, and reasonable attorney's fees. If a subcontractor fails to timely perform its obligations under paragraph (2) of subdivision (e), the builder or general contractor shall have the right to pursue a claim against the subcontractor for any resulting compensatory and consequential damages, as well as for interest on defense and indemnity costs, from the date incurred, at the rate set forth in subdivision (g) of Section 3260, and for the builder's or general contractor's reasonable attorney's fees

incurred to recover these amounts. The builder or general contractor shall bear the burden of proof to establish both the subcontractor's failure to perform under either paragraph (1) or (2) of subdivision (e) and any resulting damages. If, upon request by a subcontractor, a builder or general contractor does not reallocate defense fees to subcontractors within 30 days following final resolution of the claim as described above, the subcontractor shall have the right to pursue a claim against the builder or general contractor for any resulting compensatory and consequential damages, as well as for interest on the fees, from the date of final resolution of the claim, at the rate set forth in subdivision (g) of Section 3260, and the subcontractor's reasonable attorney's fees incurred in connection therewith. The subcontractor shall bear the burden of proof to establish both the failure to reallocate the fees and any resulting damages. Nothing in this section shall prohibit the parties from mutually agreeing to reasonable contractual provisions for damages if any party fails to elect for or perform its obligations as stated in this section. (g) A builder, general contractor, or subcontractor shall have the right to seek equitable indemnity for any claim governed by this section. (h) Nothing in this section limits, restricts, or prohibits the right of a builder, general contractor, or subcontractor to seek equitable indemnity against any supplier, design professional, or product manufacturer. (i) As used in this section, "construction defect" means a violation of the standards set forth in Sections 896 and 897.

#### **§2782.05**

(a) Except as provided in subdivision (b), provisions, clauses, covenants, and agreements contained in, collateral to, or affecting any construction contract and amendments thereto entered into on or after January 1, 2013, that purport to insure or indemnify, including the cost to defend, a general contractor, construction manager, or other subcontractor, by a subcontractor against liability for claims of death or bodily injury to persons, injury to property, or any other loss, damage, or expense are void and unenforceable to the extent the claims arise out of, pertain to, or relate to the active negligence or willful misconduct of that general contractor, construction manager, or other subcontractor, or their other agents, other servants, or other independent contractors who are responsible to the general contractor, construction manager, or other subcontractor, or for defects in design furnished by those persons, or to the extent the claims do not arise out of the scope of work of the subcontractor pursuant to the construction contract. This section shall not be waived or modified by contractual agreement, act, or omission of the parties. Contractual provisions, clauses, covenants, or agreements not expressly prohibited herein are reserved to the agreement of the parties. This section shall not affect the obligations of an insurance carrier under the holding of *Presley Homes, Inc. v. American States Insurance Company* (2001) 90 Cal.App.4th 571, nor the rights of an insurance carrier under the holding of *Buss v. Superior Court* (1997) 16 Cal.4th 35. (b) This section does not apply to: (1) Contracts for residential construction that are subject to any part of Title 7 (commencing with Section 895) of Part 2 of Division 2. (2) Direct contracts with a public agency that are governed by subdivision (b) of Section 2782. (3) Direct contracts with the owner of privately owned real property to be improved that are governed by subdivision (c) of Section 2782. (4) Any wrap-up insurance policy or program. (5) A cause of action for breach of contract or warranty that exists independently of an indemnity obligation. (6) A provision in a construction contract that requires the promisor to purchase or maintain insurance covering the acts or omissions of the promisor, including additional insurance endorsements covering the acts or omissions of the promisor during ongoing and completed operations. (7) Indemnity provisions contained in loan and financing documents, other than construction contracts to which the contractor and a contracting project owner's lender are parties. (8) General agreements of indemnity required by sureties as a condition of execution of bonds for construction contracts. (9) The benefits and protections provided by the workers' compensation laws. (10) The benefits or protections provided by the governmental immunity laws. (11) Provisions that require the purchase of any of the following: (A) Owners and contractors protective liability insurance. (B) Railroad protective liability insurance. (C) Contractors all-risk insurance. (D) Builders all-risk or named perils property insurance. (12) Contracts with design professionals. (13) Any agreement between a promisor and an admitted surety insurer regarding the promisor's obligations as a principal or indemnitor on a bond. (c) Notwithstanding any choice-of-law rules that would apply the laws of another jurisdiction, the law of California shall apply to every contract to which this section applies. (d) Any waiver of the provisions of this section is contrary to public policy and is void and unenforceable. (e) Subdivision (a) does not prohibit a subcontractor and a general contractor or construction manager from mutually agreeing to the timing or immediacy of the defense and provisions for reimbursement of defense fees and costs, so long as that agreement does not waive or modify the provisions of subdivision (a) subject, however, to paragraphs (1) and (2). A

subcontractor shall owe no defense or indemnity obligation to a general contractor or construction manager for a claim unless and until the general contractor or construction manager provides a written tender of the claim, or portion thereof, to the subcontractor that includes the information provided by the claimant or claimants relating to claims caused by that subcontractor's scope of work. In addition, the general contractor or construction manager shall provide a written statement regarding how the reasonable allocated share of fees and costs was determined. The written tender shall have the same force and effect as a notice of commencement of a legal proceeding. If a general contractor or construction manager tenders a claim, or portion thereof, to a subcontractor in the manner specified by this subdivision, the subcontractor shall elect to perform either of the following, the performance of which shall be deemed to satisfy the subcontractor's defense obligation to the general contractor or construction manager: (1) Defend the claim with counsel of its choice, and the subcontractor shall maintain control of the defense for any claim or portion of claim to which the defense obligation applies. If a subcontractor elects to defend under this paragraph, the subcontractor shall provide written notice of the election to the general contractor or construction manager within a reasonable time period following receipt of the written tender, and in no event later than 30 days following that receipt. Consistent with subdivision (a), the defense by the subcontractor shall be a complete defense of the general contractor or construction manager of all claims or portions thereof to the extent alleged to be caused by the subcontractor, including any vicarious liability claims against the general contractor or construction manager resulting from the subcontractor's scope of work, but not including claims resulting from the scope of work, actions, or omissions of the general contractor or construction manager, or any other party. Any vicarious liability imposed upon a general contractor or construction manager for claims caused by the subcontractor electing to defend under this paragraph shall be directly enforceable against the subcontractor by the general contractor, construction manager, or claimant. All information, documentation, or evidence, if any, relating to a subcontractor's assertion that another party is responsible for the claim shall be provided by that subcontractor to the general contractor or construction manager that tendered the claim. (2) Pay, within 30 days of receipt of an invoice from the general contractor or construction manager, no more than a reasonable allocated share of the general contractor's or construction manager's defense fees and costs, on an ongoing basis during the pendency of the claim, subject to reallocation consistent with subdivision (a), and including any amounts reallocated upon final resolution of the claim, either by settlement or judgment. The general contractor or construction manager shall allocate a share to itself to the extent a claim or claims are alleged to be caused by its work, actions, or omissions, and a share to each subcontractor to the extent a claim or claims are alleged to be caused by the subcontractor's work, actions, or omissions, regardless of whether the general contractor or construction manager actually tenders the claim to any particular subcontractor, and regardless of whether that subcontractor is participating in the defense. Any amounts not collected from any particular subcontractor may not be collected from any other subcontractor.

(f) Notwithstanding any other provision of law, if a subcontractor fails to timely and adequately perform its obligations under paragraph (1) of subdivision (e), the general contractor or construction manager shall have the right to pursue a claim against the subcontractor for any resulting compensatory damages, consequential damages, and reasonable attorney's fees. If a subcontractor fails to timely perform its obligations under paragraph (2) of subdivision (e), the general contractor or construction manager shall have the right to pursue a claim against the subcontractor for any resulting compensatory damages, interest on defense and indemnity costs, from the date incurred, at the rate set forth in subdivision (g) of Section 3260, consequential damages, and reasonable attorney's fees incurred to recover these amounts. The general contractor or construction manager shall bear the burden of proof to establish both the subcontractor's failure to perform under either paragraph (1) or (2) of subdivision (e) and any resulting damages. If, upon request by a subcontractor, a general contractor or construction manager does not reallocate defense fees to subcontractors within 30 days following final resolution of the claim, the subcontractor shall have the right to pursue a claim against the general contractor or construction manager for any resulting compensatory damages with interest, from the date of final resolution of the claim, at the rate set forth in subdivision (g) of Section 3260. The subcontractor shall bear the burden of proof to establish both the failure to reallocate the fees and any resulting damages. Nothing in this section shall prohibit the parties from mutually agreeing to reasonable contractual provisions for damages if any party fails to elect for or perform its obligations as stated in this section. (g) For purposes of this section, "construction manager" means a person or entity, other than a public agency or owner of privately owned real property to be improved, who is contracted by a public agency or the owner of privately owned real property to be improved to direct, schedule, or coordinate the work of contractors for a work of

improvement, but does not itself perform the work. (h) For purposes of this section, “general contractor,” in relation to a given subcontractor, means a person who has entered into a construction contract and who has entered into a subcontract with that subcontractor under which the subcontractor agrees to perform a portion of that scope of work. Where a subcontractor has itself subcontracted a portion of its work, that subcontractor, along with its general contractor, shall be considered a general contractor as to its subcontractors. (i) For purposes of this section, “subcontractor” means a person who has entered into a construction contract either with a contractor to perform a portion of that contractor’s work under a construction contract or with any person to perform a construction contract subject to the direction or control of a general contractor or construction manager. (j) A general contractor, construction manager, or subcontractor shall have the right to seek equitable indemnity for any claim governed by this section. (k) Nothing in this section limits, restricts, or prohibits the right of a general contractor, construction manager, or subcontractor to seek equitable indemnity against any supplier, design professional, product manufacturer, or other independent contractor or subcontractor. (l) This section shall not affect the validity of any existing insurance contract or agreement, including, but not limited to, a contract or agreement for workers’ compensation or an agreement issued on or before January 1, 2012, by an admitted insurer, as defined in the Insurance Code. (m) Nothing in this section shall be construed to affect the obligation, if any, of either a contractor or construction manager to indemnify, including defending or paying the costs to defend, a public agency against any claim arising from the alleged active negligence of the public agency under subdivision (b) of Section 2782 or to indemnify, including defending or paying the costs to defend, an owner of privately owned real property to be improved against any claim arising from the alleged active negligence of the owner under subdivision (c) of Section 2782. (n) Nothing in this section shall be construed to affect the obligation, if any, of either a contractor or construction manager to provide or maintain insurance covering the acts or omissions of the promisor, including additional insurance endorsements covering the acts or omissions of the promisor during ongoing and completed operations pursuant to a construction contract with a public agency under subdivision (b) of Section 2782 or an owner of privately owned real property to be improved under subdivision (c) of Section 2782.

**§8800 (Former: §3206.1)**

a) Except as otherwise agreed in writing by the owner and direct contractor, the owner shall pay the direct contractor, within 30 days after notice demanding payment pursuant to the contract is given, any progress payment due as to which there is no good faith dispute between them. The notice given shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1. (b) If there is a good faith dispute between the owner and direct contractor as to a progress payment due, the owner may withhold from the progress payment an amount not in excess of 150 percent of the disputed amount. (c) An owner that violates this section is liable to the direct contractor for a penalty of 2 percent per month on the amount wrongfully withheld, in place of any interest otherwise due. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to costs and a reasonable attorney’s fee. (d) This section does not supersede any requirement of Article 2 (commencing with Section 8810) relating to the withholding of a retention.

**§8810 (Former: §3260(b))**

This article governs a retention payment withheld by an owner from a direct contractor or by a direct contractor from a subcontractor.

**Selected Public Contract Code Sections**

**§1601**

(a) Any public entity may adopt methods and procedures to do any of the following: (1) Receive bids on public works or other contracts over the Internet, but only if no bid can be opened before the bid deadline and all bids can be verified as authentic. (2) Receive supporting materials submitted pursuant to a public works contract over the Internet. For purposes of this section, “supporting materials” includes, but is not limited to, payment requests, shop drawings, schedules, notices of claims, and certified payrolls. (b) If a public entity allows or requires bids or supporting materials to be submitted over the Internet pursuant to this section, the public entity shall provide an electronic receipt to the contractor showing the date and time the submission was received. The public entity shall provide the electronic receipt to the

contractor either by immediate transmission to the contractor or by providing the contractor access to an electronic file online that contains this information and that can be viewed and printed by the contractor.

#### **§7102**

Contract provisions in construction contracts of public agencies and subcontracts thereunder which limit the contractee's liability to an extension of time for delay for which the contractee is responsible and which delay is unreasonable under the circumstances involved, and not within the contemplation of the parties, shall not be construed to preclude the recovery of damages by the contractor or subcontractor. No public agency may require the waiver, alteration, or limitation of the applicability of this section. Any such waiver, alteration, or limitation is void. This section shall not be construed to void any provision in a construction contract which requires notice of delays, provides for arbitration or other procedure for settlement, or provides for liquidated damages.

#### **§7104**

Any public works contract of a local public entity which involves digging trenches or other excavations that extend deeper than four feet below the surface shall contain a clause which provides the following: (a) That the contractor shall promptly, and before the following conditions are disturbed, notify the local public entity, in writing, of any: (1) Material that the contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law. (2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids. (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract. (b) That the local public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the contract. (c) That, in the event that a dispute arises between the local public entity and the contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, the contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

#### **§7105**

(a) Construction contracts of public agencies shall not require the contractor to be responsible for the cost of repairing or restoring damage to the work, which damage is determined to have been proximately caused by an act of God, in excess of 5 percent of the contracted amount, provided, that the work damaged is built in accordance with accepted and applicable building standards and the plans and specifications of the awarding authority. However, contracts may include provisions for terminating the contract. The requirements of this section shall not be mandatory as to construction contracts financed by revenue bonds. This section shall not prohibit a public agency from requiring that a contractor obtain insurance to indemnify the public agency for any damage to the work caused by an act of God if the insurance premium is a separate bid item. If insurance is required, requests for bids issued by public agencies shall set forth the amount of the work to be covered and the contract resulting from the requests for bids shall require that the contractor furnish evidence of satisfactory insurance coverage to the public agency prior to execution of the contract. (b) For the purposes of this section: (1) "Public agency" shall include the state, the Regents of the University of California, a city, county, district, public authority, public agency, municipal utility, and any other political subdivision or public corporation of the state. (2) "Acts of God" shall include only the following occurrences or conditions and effects: earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves. (c) Public agencies may make changes in construction contracts for public improvements in the course of construction to bring the completed improvements into compliance with environmental requirements or standards established by state and federal statutes and regulations enacted after the contract has been awarded or entered into. The contractor shall be paid for the changes in accordance with the provisions of the contract governing payment for changes in the work or, if no provisions are set forth in the contract, payment shall be as agreed to by the parties. (d) (1) Where

authority to contract is vested in any public agency, excluding the state, the authority shall include the power, by mutual consent of the contracting parties, to terminate, amend, or modify any contract within the scope of such authority. (2) Paragraph (1) shall not apply to contracts entered into pursuant to any statute expressly requiring that contracts be let or awarded on the basis of competitive bids. Contracts of public agencies, excluding the state, required to be let or awarded on the basis of competitive bids pursuant to any statute may be terminated, amended, or modified only if the termination, amendment, or modification is so provided in the contract or is authorized under provision of law other than this subdivision. The compensation payable, if any, for amendments and modifications shall be determined as provided in the contract. The compensation payable, if any, in the event the contract is so terminated shall be determined as provided in the contract or applicable statutory provision providing for the termination. (3) Contracts of public agencies may include provisions for termination for environmental considerations at the discretion of the public agencies.

## **2014 California Recently Enacted Laws**

### **Selected Public Contract Code Sections**

#### **§4104**

Any officer, department, board, or commission taking bids for the construction of any public work or improvement shall provide in the specifications prepared for the work or improvement or in the general conditions under which bids will be received for the doing of the work incident to the public work or improvement that any person making a bid or offer to perform the work, shall, in his or her bid or offer, set forth: (a) (1) The name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater. (2) (A) Subject to subparagraph (B), any information requested by the officer, department, board, or commission concerning any subcontractor who the prime contractor is required to list under this subdivision, other than the subcontractor's name and location of business, may be submitted by the prime contractor up to 24 hours after the deadline established by the officer, department, board, or commission for receipt of bids by prime contractors. (B) A state or local agency may implement subparagraph (A) at its option. (b) The portion of the work that will be done by each subcontractor under this act. The prime contractor shall list only one subcontractor for each portion as is defined by the prime contractor in his or her bid. (c) This section shall become inoperative on July 1, 2014, and, as of January 1, 2015, is repealed.

**Comment: Requires a general contractor in the submission of a public works bid to include the license number of the listed subcontractors. Prohibits a bid protest on the grounds of an "inadvertent error" in providing the license number. Takes effect on July 1, 2014**

#### **§20133**

**Comment: Extends the sunset date for California counties to use design-build procurement process from 2014-2016**

### **Business and Professions Code §7114.2**

Any licensed or unlicensed person who commits any act prohibited by Section 119 is subject to the administrative remedies authorized by this chapter. Unless otherwise expressly provided, the remedies authorized under this section shall be separate from, and in addition to, all other available remedies, whether civil or criminal.

**Comment: Authorizes the Contractors State License Board to take administrative remedies on any licensed or unlicensed person that fraudulently uses a contractor's license**

**Government Code §5956.6**

(a) For purposes of facilitating projects, the agreements specified in Section 5956.4 may include provisions for the lease of rights-of-way in, and airspace over, property owned by a governmental agency, for the granting of necessary easements, and for the issuance of permits or other authorizations to enable the private entity to construct infrastructure facilities supplemental to existing government-owned facilities. Infrastructure constructed by a private entity pursuant to this chapter shall, at all times, be owned by a governmental agency, unless the governmental agency, in its discretion, elects to provide for ownership of the facility by the private entity during the term of the agreement. The agreement shall provide for the lease of those facilities to, or ownership by, the private entity for up to 35 years. In consideration therefor, the agreement shall provide for complete reversion of the privately constructed facility to the governmental agency at the expiration of the lease at no charge to the governmental agency. Subsequent to the expiration of the lease or ownership period, the governmental agency may continue to charge fees for use of the infrastructure facility. If, after the expiration of the lease or ownership period, the governmental agency continues to lease airspace rights to the private entity, it shall do so at fair market value. (b) The agreement between the governmental agency and the private entity shall include, but need not be limited to, provisions to ensure the following: (1) Compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). Neither the act of selecting a proposed project or a private entity, nor the execution of an agreement with a private entity, shall require prior compliance with the act. However, appropriate compliance with the act shall thereafter occur before project development commences. (2) Performance bonds as security to ensure completion of the construction of the facility and contractual provisions that are necessary to protect the revenue streams of the project. (3) Adequate financial resources of the private entity to design, build, and operate the facility, after the date of the agreement. (4) Authority for the governmental agency to impose user fees for use of the facility in an amount sufficient to protect the revenue streams necessary for projects or facilities undertaken pursuant to this chapter. User fee revenues shall be dedicated exclusively to payment of the private entity's direct and indirect capital outlay costs for the project, direct and indirect costs associated with operations, direct and indirect user fee collection costs, direct and indirect costs of administration of the facility, reimbursement for the direct and indirect costs of maintenance, and a negotiated reasonable return on investment to the private entity. (5) As a precondition to the imposition or increase of a user fee, the governmental agency shall conduct at least one public hearing at which public testimony will be received regarding a proposed user fee revenue or increase in user fee revenues. The public hearing shall precede the action by the governmental agency to actually impose a user fee or to increase an existing user fee. The governmental agency shall consider the public testimony prior to imposing a new or increased user fee. The governmental agency shall provide the following notices and utilize the following procedures: (A) Notice of the date, time, and place of the meeting, including a general explanation of the matter to be considered, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the governmental agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed prior to the expiration of the one-year period for which the written request was filed. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. (B) At least 10 days prior to the meeting, the governmental agency shall make available to the public data that supports the amount of the fee or the increase in the fee. (C) (i) At least 10 days prior to the meeting, the governmental agency shall publish a notice in a newspaper of general circulation in that agency's jurisdiction stating the date, time, and place of the meeting, including a general explanation of the matter to be considered. (ii) Any costs incurred by the governmental agency in conducting the meeting or meetings required by this section may be recovered from fees charged for the services that are the subject of the fee. (iii) For transportation projects specifically authorized by this chapter, at least 10 days prior to the meeting, the governmental agency shall publish for four consecutive times, a notice in the newspaper of general circulation in the affected area stating in no smaller than 10-point type a notice specifying the subject of the hearing, the date, time, and place of the meeting, and, in at least 8-point type, a general explanation of the matter to be considered. (D) No local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount that exceeds the estimated amount required to provide the service for which the fee or service charge is levied and a

reasonable rate of return on investment, pursuant to paragraph (4). Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge pursuant to this chapter shall be taken only by ordinance or resolution. The legislative body of a local agency shall not delegate the authority to adopt a new fee or service charge, or to increase a fee or service charge. (6) Require that if the legislative body of the governmental agency determines that fees or service charges create revenues in excess of the actual cost for which the user fee revenues are dedicated and a reasonable rate of return on investment, pursuant to paragraph (4), those revenues shall either be applied to any indebtedness incurred by the private entity with respect to the project, be paid into a reserve account in order to offset future operation costs, be paid into the appropriate government account, be used to reduce the user fee or service charge creating the excess, or a combination of these sources. (7) Require the private entity to maintain the facility in good operating condition at all times, including the time the facility reverts to the governmental agency. (8) Preparation by the private entity of an annual audited report accounting for the income received and expenses to operate the facility. The private entity shall make that report available to any member of the public for a cost not to exceed the cost of reproduction of the report. (9) Provision for a buyout of the private entity by the governmental entity in the event of termination or default before the end of the lease term. (10) Provision for appropriate indemnity promises between the governmental agency and the private entity. (11) Provision requiring the private entity to maintain insurance with those coverages and in those amounts that the governmental agency deems appropriate. (12) In the event of a dispute between the governmental agency and the private entity, both parties shall be entitled to all available legal or equitable remedies. (13) Payment bonds to secure the payment of claims of laborers, mechanics, and materials suppliers employed on the work under the contract. Payment bonds required under this subdivision shall conform to the requirements of Sections 9550 to 9566, inclusive, of the Civil Code.

**Comment: Requires a performance and payment bond on public-private-partnership projects**



# **Fundamentals of Construction Contracts in California:**

*Understanding the Issues*

Santa Ana, CA      February 7, 2014

## **RECENTLY ENACTED LEGISLATION**



*Business Law for the Business Person*

# **LORMAN SEMINAR- FEBRUARY 7, 2014**

## **SELECTED STATUTES FOR PRESENTATION BY PATRICK M. HARTNETT, THE HARTNETT LAW GROUP:**

### **REVISIONS TO CALIFORNIA STATUTES INVOLVING PROMPT PAY, MECHANIC'S LIENS, PAYMENT BONDS, STOP PAYMENT NOTICES**

§8000. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this part.

§8004. "Claimant" means a person that has a right under this part to record a claim of lien, give a stop payment notice, or assert a claim against a payment bond, or do any combination of the foregoing.

§8006. "Construction lender" means either of the following: (a) A mortgagee or beneficiary under a deed of trust lending funds with which the cost of all or part of a work of improvement is to be paid, or the assignee or successor in interest of the mortgagee or beneficiary. (b) An escrow holder or other person holding funds provided by an owner, lender, or another person as a fund for with which the cost of all or part of a work of improvement is to be paid.

§8008. "Contract" means an agreement that provides for all or part of a work of improvement.

§8014. "Design professional" means a person licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, licensed as a landscape architect pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the Business and Professions Code, registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code.

§8016. "Direct contract" means a contract between an owner and a direct contractor that provides for all or part of a work of improvement.

§8018. "Direct contractor" means a contractor that has a direct contractual relationship with an owner. A reference in another statute to a "prime contractor" in connection with the provisions in this part means a "direct contractor."

§8024. (a) "Laborer" means a person who, acting as an employee, performs labor upon, or bestows skill or other necessary services on, a work of improvement. (b) "Laborer" includes a person or entity to which a portion of a laborer's compensation for a work of improvement, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and implementing regulations, is paid by agreement with that laborer or the collective bargaining agent of that laborer. (c) A person or entity described in subdivision (b) that has standing under applicable law to maintain a direct legal action, in its own name or as an assignee, to collect any portion of compensation owed for a laborer for a work of improvement, shall have standing to enforce any rights or claims of the laborer under this part, to the extent of the compensation agreed to be paid to the person or entity for labor on that improvement. This subdivision is intended to give effect to the longstanding public policy of this state to protect the entire compensation of a laborer on a work of improvement, regardless of the form in which that compensation is to be paid.

§8028. "Material supplier" means a person that provides material or supplies to be used or consumed in a work of improvement.

§8034. (a) For the purposes of Title 2 (commencing with Section 8160), “preliminary notice” means the notice provided for in Chapter 2 (commencing with Section 8200) of Title 2. (b) For the purposes of Title 3 (commencing with Section 9000), “preliminary notice” means the notice provided for in Chapter 3 (commencing with Section 9300) of Title 3.

§8036. “Public entity” means the state, Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state.

§8038. “Public works contract” has the meaning provided in Section 1101 of the Public Contract Code.

§8040. “Site” means the real property on which a work of improvement is situated or planned.

§8042. “Site improvement” means any of the following work on real property: (a) Demolition or removal of improvements, trees, or other vegetation. (b) Drilling test holes. (c) Grading, filling, or otherwise improving the real property or a street, highway, or sidewalk in front of or adjoining the real property. (d) Construction or installation of sewers or other public utilities. (e) Construction of areas, vaults, cellars, or rooms under sidewalks. (f) Any other work or improvements in preparation of the site for a work of improvement.

§8044. (a) (1) For the purposes of Title 2 (commencing with Section 8160), “stop payment notice” means the notice given by a claimant under Chapter 5 (commencing with Section 8500) of Title 2. (2) A stop payment notice given under Title 2 (commencing with Section 8160) may be bonded or unbonded. A “bonded stop payment notice” is a notice given with a bond under Section 8532. An “unbonded stop payment notice” is a notice not given with a bond under Section 8532. (3) Except to the extent Title 2 (commencing with Section 8160) distinguishes between a bonded and an unbonded stop payment notice, a reference in that title to a stop payment notice includes both a bonded and an unbonded notice. (b) For the purposes of Title 3 (commencing with Section 9000), “stop payment notice” means the notice given by a claimant under Chapter 4 (commencing with Section 9350) of Title 3. (c) A reference in another statute to a “stop notice” in connection with the remedies provided in this part means a stop payment notice.

§8046. “Subcontractor” means a contractor that does not have a direct contractual relationship with an owner. The term includes a contractor that has a contractual relationship with a direct contractor or with another subcontractor.

§8050. (a) “Work of improvement” includes, but is not limited to: (1) Construction, alteration, repair, demolition, or removal, in whole or in part, of, or addition to, a building, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence, machinery, railroad, or road. (2) Seeding, sodding, or planting of real property for landscaping purposes. (3) Filling, leveling, or grading of real property. (b) Except as otherwise provided in this part, “work of improvement” means the entire structure or scheme of improvement as a whole, and includes site improvement.

§8054. (a) This part does not apply to a transaction governed by the Oil and Gas Lien Act (Chapter 2.5 (commencing with Section 1203.50) of Title 4 of Part 3 of the Code of Civil Procedure). (b) This part does not apply to or change improvement security under the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code). (c) This part does not apply to a transaction governed by Sections 20457 to 20464, inclusive, of the Public Contract Code.

§8056. Except as otherwise provided in this part, Part 2 (commencing with Section 307) of the Code of Civil Procedure provides the rules of practice in proceedings under this part.

§8060. (a) If this part provides for filing a contract, plan, or other paper with the county recorder, the provision is satisfied by filing the paper in the office of the county recorder of the county in which the work of improvement or part of it is situated. (b) If this part provides for recording a notice, claim of lien, release of lien, payment bond, or other paper, the provision is satisfied by filing the paper for record in the office of the county recorder of the county in which the work of improvement or part of it is situated. (c) The county

recorder shall number, index, and preserve a contract, plan, or other paper presented for filing under this part, and shall number, index, and transcribe into the official records, in the same manner as a conveyance of real property, a notice, claim of lien, payment bond, or other paper recorded under this part. (d) The county recorder shall charge and collect the fees provided in Article 5 (commencing with Section 27360) of Chapter 6 of Part 3 of Division 2 of Title 3 of the Government Code for performing duties under this section.

§8062. No act of an owner in good faith and in compliance with a provision of this part shall be construed to prevent a direct contractor's performance of the contract, or exonerate a surety on a performance or payment bond.

§8102. (a) Notice under this part shall, in addition to any other information required by statute for that type of notice, include all of the following information to the extent known to the person giving the notice: (1) The name and address of the owner or reputed owner. (2) The name and address of the direct contractor. (3) The name and address of the construction lender, if any. (4) A description of the site sufficient for identification, including the street address of the site, if any. If a sufficient legal description of the site is given, the effectiveness of the notice is not affected by the fact that the street address is erroneous or is omitted. (5) The name, address, and relationship to the parties of the person giving the notice. (6) If the person giving the notice is a claimant: (A) A general statement of the work provided. (B) The name of the person to or for whom the work is provided. (C) A statement or estimate of the claimant's demand, if any, after deducting all just credits and offsets. (b) Notice is not invalid by reason of any variance from the requirements of this section if the notice is sufficient to substantially inform the person given notice of the information required by this section and other information required in the notice.

§8104. (a) A direct contractor or subcontractor on a work of improvement governed by this part 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, shall not later than the date the compensation became delinquent, give the laborer, the laborer's bargaining representative, if any, the construction lender or reputed construction lender, if any, and the owner or reputed owner, notice that includes all of the following information, in addition to the information required by Section 8102: (1) The name and address of the laborer, and of any person or entity described in subdivision (b) of Section 8024 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.

§8116. Notice under this part is complete and deemed to have been given at the following times: (a) If given by personal delivery, when delivered. (b) If given by mail, when deposited in the mail or with an express service carrier in the manner provided in Section 1013 of the Code of Civil Procedure. (c) If given by leaving the notice and mailing a copy in the manner provided in Section 415.20 of the Code of Civil Procedure for service of summons in a civil action, five days after mailing. (d) If given by posting, when displayed. (e) If given by recording, when recorded in the office of the county recorder.

§8118. (a) Proof that notice was given to a person in the manner required by this part shall be made by a proof of notice declaration that states all of the following: (1) The type or description of the notice given. (2) The date, place, and manner of notice, and facts showing that notice was given in the manner required by statute. (3) The name and address of the person to which notice was given, and, if appropriate, the title or capacity in which the person was given notice. (b) If the notice is given by mail, the declaration shall be accompanied by one of the following: (1) Documentation provided by the United States Postal Service showing that payment was made to mail the notice using registered or certified mail, or express mail. (2) Documentation provided by an express service carrier showing that payment was made to send the notice using an overnight delivery service. (3) A return receipt, delivery confirmation, signature confirmation, tracking record, or other proof of delivery or attempted delivery provided by the United States Postal Service, or a photocopy of the record of delivery and receipt maintained by the United States Postal Service, showing the date of delivery and to whom delivered, or in the event of nondelivery, by the

returned envelope itself. (4) A tracking record or other documentation provided by an express service carrier showing delivery or attempted delivery of the notice.

§8122. An owner, direct contractor, or subcontractor may not, by contract or otherwise, waive, affect, or impair any other claimant's rights under this part, whether with or without notice, and any term of a contract that purports to do so is void and unenforceable unless and until the claimant executes and delivers a waiver and release under this article.

§8124. A claimant's waiver and release does not release the owner, construction lender, or surety on a payment bond from a lien or claim unless both of the following conditions are satisfied: (a) The waiver and release is in substantially the form provided in this article and is signed by the claimant. (b) If the release is a conditional release, there is evidence of payment to the claimant. Evidence of payment may be either of the following: (1) The claimant's endorsement on a single or joint payee check that has been paid by the financial institution on which it was drawn. (2) Written acknowledgment of payment by the claimant.

§8126. An oral or written statement purporting to waive, release, impair or otherwise adversely affect a lien or claim is void and unenforceable and does not create an estoppel or impairment of the lien or claim unless either of the following conditions is satisfied: (a) The statement is pursuant to a waiver and release under this article. (b) The claimant has actually received payment in full for the claim.

§8128. (a) A claimant may reduce the amount of, or release in its entirety, a stop payment notice. The reduction or release shall be in writing and may be given in a form other than a waiver and release form provided in this article. (b) The writing shall identify whether it is a reduction of the amount of the stop payment notice, or a release of the notice in its entirety. If the writing is a reduction, it shall state the amount of the reduction, and the amount to remain withheld after the reduction. (c) A claimant's reduction or release of a stop payment notice has the following effect: (1) The reduction or release releases the claimant's right to enforce payment of the claim stated in the notice to the extent of the reduction or release. (2) The reduction or release releases the person given the notice from the obligation to withhold funds pursuant to the notice to the extent of the reduction or release. (3) The reduction or release does not preclude the claimant from giving a subsequent stop payment notice that is timely and proper. (4) The reduction or release does not release any right of the claimant other than the right to enforce payment of the claim stated in the stop payment notice to the extent of the reduction or release.

§8130. This article does not affect the enforceability of either an accord and satisfaction concerning a good faith dispute or an agreement made in settlement of an action pending in court if the accord and satisfaction or agreement and settlement make specific reference to the lien or claim.

§8132. If a claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form:

#### CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

#### Identifying Information

Name of Claimant:

Name of Customer:

Job Location:

Owner:

Through Date:

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### Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check:

Amount of Check: \$

Check Payable to:

### Exceptions

This document does not affect any of the following:

(1) Retentions.

(2) Extras for which the claimant has not received payment.

(3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:

Date(s) of waiver and release:

Amount(s) of unpaid progress payment(s): \$

(4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

### Signature

Claimant's Signature:

Claimant's Title:

Date of Signature:

§8134. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant asserts in the waiver that the claimant has, in fact, been paid the progress payment, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form, with the text of the "Notice to Claimant" in at least as large a type as the largest type otherwise in the form:

### UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

### Identifying Information

Name of Claimant:

Name of Customer:

Job Location:

Owner:

Through Date:

### Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has

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for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment: \$

#### Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

#### Signature

Claimant's Signature:

Claimant's Title:

Date of Signature:

§8136. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form:

#### CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

#### Identifying Information

Name of Claimant:

Name of Customer:

Job Location:

Owner:

#### Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check:

Amount of Check: \$

Check Payable to:

#### Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$

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Signature

Claimant's Signature:

Claimant's Title:

Date of Signature:

§8138. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver that the claimant has, in fact, been paid the final payment, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form, with the text of the "Notice to Claimant" in at least as large a type as the largest type otherwise in the form:

#### UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

#### Identifying Information

Name of Claimant:

Name of Customer:

Job Location:

Owner:

#### Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

#### Exceptions

This document does not affect the following:

Disputed claims for extras in the amount of: \$

Signature

Claimant's Signature:

Claimant's Title:

Date of Signature:

§8152. None of the following releases a surety from liability on a bond given under this part: (a) A change, alteration, or modification to a contract, plan, specification, or agreement for a work of improvement or for work provided for a work of improvement. (b) A change or modification to the terms of payment or an extension of the time for payment for a work of improvement. (c) A rescission or attempted rescission of a contract, agreement, or bond. (d) A condition precedent or subsequent in the bond purporting to limit the right of recovery of a claimant otherwise entitled to recover pursuant to a contract, agreement, or bond. (e) In the case of a bond given for the benefit of claimants, the fraud of a person other than the claimant seeking to recover on the bond.

§8154. (a) A bond given under this part shall be construed most strongly against the surety and in favor of all persons for whose benefit the bond is given.

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(b) A surety is not released from liability to those for whose benefit the bond has been given by reason of a breach of the direct contract or on the part of any obligee named in the bond.

(c) Except as otherwise provided by statute, the sole conditions of recovery on the bond are that the claimant is a person described in Article 1 (commencing with Section 8400) of Chapter 4 of Title 2, or in Section 9100, and has not been paid the full amount of the claim.

§8160. This title applies to a work of improvement that is not governed by Title 3 (commencing with Section 9000) of this part.

§8170. (a) A written direct contract shall provide a space for the owner to enter the following information: (1) The owner's name, address, and place of business, if any. (2) The name and address of the construction lender, if any. This paragraph does not apply to a home improvement contract or swimming pool contract subject to Article 10 (commencing with Section 7150) of Chapter 9 of Division 3 of the Business and Professions Code. (b) A written contract entered into between a direct contractor and subcontractor, or between subcontractors, shall provide a space for the name and address of the owner, direct contractor, and construction lender, if any.

§8172. (a) A public entity that issues building permits shall, in its application form for a building permit, provide space and a designation for the applicant to enter the name, branch designation, if any, and address of the construction lender and shall keep the information on file open for public inspection during the regular business hours of the public entity. (b) If there is no known construction lender, the applicant shall note that fact in the designated space. (c) Failure of the applicant to indicate the name and address of the construction lender on the application does not relieve a person required to give the construction lender preliminary notice from that duty.

§8174. (a) A mortgage, deed of trust, or other instrument securing a loan, any of the proceeds of which may be used for a work of improvement, shall bear the designation "Construction Trust Deed" prominently on its face and shall state all of the following: (1) The name and address of the construction lender. (2) The name and address of the owner of the real property described in the instrument. (3) A legal description of the real property that secures the loan and, if known, the street address of the property. (b) Failure to comply with subdivision (a) does not affect the validity of the mortgage, deed of trust, or other instrument. (c) Failure to comply with subdivision (a) does not relieve a person required to give preliminary notice from that duty. (d) The county recorder of the county in which the instrument is recorded shall indicate in the general index of the official records of the county that the instrument secures a construction loan.

§8180. (a) For the purpose of this title, completion of a work of improvement occurs upon the occurrence of any of the following events: (1) Actual completion of the work of improvement. (2) Occupation or use by the owner accompanied by cessation of labor. (3) Cessation of labor for a continuous period of 60 days. (4) Recordation of a notice of cessation after cessation of labor for a continuous period of 30 days. (b) Notwithstanding subdivision (a), if a work of improvement is subject to acceptance by a public entity, completion occurs on acceptance.

§8182. (a) An owner may record a notice of completion on or within 15 days after the date of completion of a work of improvement. (b) The notice of completion shall be signed and verified by the owner. (c) The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1, and shall also include all of the following information: (1) If the notice is given only of completion of a contract for a particular portion of the work of improvement as provided in Section 8186, the name of the direct contractor under that contract and a general statement of the work provided pursuant to the contract. (2) If signed by the owner's successor in interest, the name and address of the successor's transferor. (3) The nature of the interest or estate of the owner. (4) The date of completion. An erroneous statement of the date of completion does not affect the effectiveness of the notice if the true date of completion is 15 days or less before the date of recordation of the notice. (d) A notice of completion that does not comply with the provisions of this section is not effective. (e) For the purpose of this section, "owner" means the owner who causes a building, improvement, or structure to be constructed, altered, or repaired, or that person's successor in interest at the date a notice of completion is recorded, whether the interest or estate of the owner be in fee, as vendee under a contract of purchase, as lessee, or other interest or estate less than the

fee. Where the interest or estate is held by two or more persons as joint tenants or tenants in common, any one or more of the cotenants may be deemed to be the “owner” within the meaning of this section.

§8184. A notice of completion in otherwise proper form, verified and containing the information required by this title, shall be accepted by the recorder for recording and is deemed duly recorded without acknowledgment.

§8186. If a work of improvement is made pursuant to two or more direct contracts, each covering a portion of the work of improvement: (a) The owner may record a notice of completion of a direct contract for a portion of the work of improvement. On recordation of the notice of completion, for the purpose of Sections 8412 and 8414, a direct contractor is deemed to have completed the contract for which the notice of completion is recorded and a claimant other than a direct contractor is deemed to have ceased providing work. (b) If the owner does not record a notice of completion under this section, the period for recording a claim of lien is that provided in Sections 8412 and 8414.

§8188. (a) Proof that notice was given to a person in the manner required by this part shall be made by a proof of notice declaration that states all of the following: (1) The type or description of the notice given. (2) The date, place, and manner of notice, and facts showing that notice was given in the manner required by statute. (3) The name and address of the person to which notice was given, and, if appropriate, the title or capacity in which the person was given notice. (b) If the notice is given by mail, the declaration shall be accompanied by one of the following: (1) Documentation provided by the United States Postal Service showing that payment was made to mail the notice using registered or certified mail, or express mail. (2) Documentation provided by an express service carrier showing that payment was made to send the notice using an overnight delivery service. (3) A return receipt, delivery confirmation, signature confirmation, tracking record, or other proof of delivery or attempted delivery provided by the United States Postal Service, or a photocopy of the record of delivery and receipt maintained by the United States Postal Service, showing the date of delivery and to whom delivered, or in the event of nondelivery, by the returned envelope itself. (4) A tracking record or other documentation provided by an express service carrier showing delivery or attempted delivery of the notice.

§8190. (a) An owner that records a notice of completion or cessation shall, within 10 days of the date the notice of completion or cessation is filed for record, give a copy of the notice to all of the following persons: (1) A direct contractor. (2) A claimant that has given the owner preliminary notice. (b) The copy of the notice shall be given in compliance with the requirements of Chapter 2 (commencing with Section 8100) of Title 1. (c) If the owner fails to give notice to a person as required by subdivision (a), the notice is ineffective to shorten the time within which that person may record a claim of lien under Sections 8412 and 8414. The ineffectiveness of the notice is the sole liability of the owner for failure to give notice to a person under subdivision (a). (d) For the purpose of this section, “owner” means a person who has an interest in real property, or the person’s successor in interest on the date a notice of completion or notice of cessation is recorded, who causes a building, improvement, or structure, to be constructed, altered, or repaired on the property. If the property is owned by two or more persons as joint tenants or tenants in common, any one or more of the cotenants may be deemed to be the “owner” within the meaning of this section. However, this section does not apply to any of the following owners: (1) A person that occupies the real property as a personal residence, if the dwelling contains four or fewer residential units. (2) A person that has a security interest in the property. (3) A person that obtains an interest in the property pursuant to a transfer described in subdivision (b), (c), or (d) of Section 1102.2.

§8200. (a) Except as otherwise provided by statute, before recording a lien claim, giving a stop payment notice, or asserting a claim against a payment bond, a claimant shall give preliminary notice to the following persons: (1) The owner or reputed owner. (2) The direct contractor or reputed direct contractor to which the claimant provides work, either directly or through one or more subcontractors. (3) The construction lender or reputed construction lender, if any. (b) The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1. (c) Compliance with this section is a necessary prerequisite to the validity of a lien claim or stop payment notice under this title. (d) Compliance with this section or with Section 8612 is a necessary prerequisite to the validity of a claim against a payment bond under this title. (e) Notwithstanding the foregoing subdivisions: (1) A laborer is not required

to give preliminary notice. (2) A claimant with a direct contractual relationship with an owner or reputed owner is required to give preliminary notice only to the construction lender or reputed construction lender, if any.

§8202. (a) The preliminary notice shall comply with the requirements of Section 8102, and shall also include: (1) A general description of the work to be provided. (2) An estimate of the total price of the work provided and to be provided. (3) The following statement in boldface type:

**NOTICE TO PROPERTY OWNER**

**EVEN THOUGH YOU HAVE PAID YOUR CONTRACTOR IN FULL**, if the person or firm that has given you this notice is not paid in full for labor, service, equipment, or material provided or to be provided to your construction project, a lien may be placed on your property. Foreclosure of the lien may lead to loss of all or part of your property. You may wish to protect yourself against this by (1) requiring your contractor to provide a signed release by the person or firm that has given you this notice before making payment to your contractor, or (2) any other method that is appropriate under the circumstances.

This notice is required by law to be served by the undersigned as a statement of your legal rights. This notice is not intended to reflect upon the financial condition of the contractor or the person employed by you on the construction project.

If you record a notice of cessation or completion of your construction project, you must within 10 days after recording, send a copy of the notice of completion to your contractor and the person or firm that has given you this notice. The notice must be sent by registered or certified mail. Failure to send the notice will extend the deadline to record a claim of lien. You are not required to send the notice if you are a residential homeowner of a dwelling containing four or fewer units.

(b) If preliminary notice is given by a subcontractor that has not paid all compensation due to a laborer, the notice shall include the name and address of the laborer and any person or entity described in subdivision (b) of Section 8024 to which payments are due. (c) If an invoice for material or certified payroll contains the information required by this section and Section 8102, a copy of the invoice or payroll, given in compliance with the requirements of Chapter 2 (commencing with Section 8100) of Title 1, is sufficient.

§8204. (a) A preliminary notice shall be given not later than 20 days after the claimant has first furnished work on the work of improvement. If work has been provided by a claimant who did not give a preliminary notice, that claimant shall not be precluded from giving a preliminary notice at any time thereafter. The claimant shall, however, be entitled to record a lien, give a stop payment notice, and assert a claim against a payment bond only for work performed within 20 days prior to the service of the preliminary notice, and at any time thereafter. (b) A design professional who has furnished services for the design of the work of improvement and who gives a preliminary notice not later than 20 days after the work of improvement has commenced shall be deemed to have complied with Section 8200 with respect to the design services furnished, or to be furnished.

§8206. (a) Except as provided in subdivision (b), a claimant need give only one preliminary notice to each person to which notice must be given under this chapter with respect to all work provided by the claimant for a work of improvement.

(b) If a claimant provides work pursuant to contracts with more than one subcontractor, the claimant shall give a separate preliminary notice with respect to work provided pursuant to each contract. (c) A preliminary notice that contains a general description of work provided by the claimant through the date of the notice also covers work provided by the claimant after the date of the notice whether or not they are within the scope of the general description contained in the notice.

§8208. A direct contractor shall make available to any person seeking to give preliminary notice the following information: (a) The name and address of the owner. (b) The name and address of the construction lender, if any.

§8210. If one or more construction loans are obtained after commencement of a work of improvement, the owner shall give notice of the name and address of the construction lender or lenders to each person that has given the owner preliminary notice.

§8212. An agreement made or entered into by an owner whereby the owner agrees to waive the rights conferred on the owner by this chapter is void and unenforceable.

§8214. (a) Each person who has served a preliminary notice may file the preliminary notice with the county recorder. A preliminary notice filed pursuant to this section shall comply with the requirements of Section 8102. (b) Upon the acceptance for recording of a notice of completion or notice of cessation the county recorder shall mail to those persons who have filed a preliminary notice, notification that a notice of completion or notice of cessation has been recorded on the property, and shall affix the date that the notice of completion or notice of cessation was recorded with the county recorder. The notification given by the county recorder under this section is not governed by the requirements of Chapter 2 (commencing with Section 8100) of Title 1. (c) The failure of the county recorder to mail the notification to the person who filed a preliminary notice, or the failure of those persons to receive the notification or to receive complete notification, shall not affect the period within which a claim of lien is required to be recorded. However, the county recorder shall make a good faith effort to mail notification to those persons who have filed the preliminary notice under this section and to do so within five days after the recording of a notice of completion or notice of cessation. (d) The county recorder may cause to be destroyed all documents filed pursuant to this section, two years after the date of filing. (e) The preliminary notice that a person may file pursuant to this section is for the limited purpose of facilitating the mailing of notice by the county recorder of recorded notices of completion and notices of cessation. The notice that is filed is not a recordable document and shall not be entered into those official records of the county which by law impart constructive notice. Notwithstanding any other provision of law, the index maintained by the recorder of filed preliminary notices shall be separate and distinct from those indexes maintained by the county recorder of those official records of the county which by law impart constructive notice. The filing of a preliminary notice with the county recorder does not give rise to any actual or constructive notice with respect to any party of the existence or contents of a filed preliminary notice nor to any duty of inquiry on the part of any party as to the existence or contents of that notice.

§8216. If the contract of any subcontractor on a particular work of improvement provides for payment to the subcontractor of more than four hundred dollars (\$400), the failure of that subcontractor, licensed under the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), to give the notice provided for in this chapter, constitutes grounds for disciplinary action under the Contractors' State License Law.

§8302. (a) A design professional has, from the date of recordation of a claim of lien under this chapter, a lien on the site notwithstanding the absence of commencement of the planned work of improvement, if the landowner who contracted for the design professional's services is also the owner of the site at the time of recordation of the claim of lien. (b) The lien of the design professional is for the amount of the design professional's fee for services provided under the contract or the reasonable value of those services, whichever is less. The amount of the lien is reduced by the amount of any deposit or prior payment under the contract. (c) A design professional may not record a claim of lien, and a lien may not be created, under this chapter 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 provided by the design professional.

§8304. A design professional is not entitled to a lien under this chapter unless all of the following conditions are satisfied: (a) The work of improvement for which the design professional provided services has not commenced. (b) The landowner defaults in a payment required under the contract or refuses to pay the demand of the design professional made under the contract. (c) Not less than 10 days before recording a claim of lien, the design professional gives the landowner notice making a demand for payment, and stating that a default has occurred under the contract and the amount of the default. (d) The design professional records a claim of lien. The claim of lien shall include all of the following information: (1) The name of the design professional. (2) The amount of the claim. (3) The current owner of record of the site. (4) A legal

description of the site. (5) Identification of the building permit or other governmental approval for the work of improvement.

§8306. (a) On recordation of the claim of lien, a lien is created in favor of the named design professional. (b) The lien automatically expires and is null and void and of no further force or effect on the occurrence of either of the following events: (1) The commencement of the work of improvement for which the design professional provided services. (2) The expiration of 90 days after recording the claim of lien, unless the design professional commences an action to enforce the lien within that time. (c) If the landowner partially or fully satisfies the lien, the design professional shall execute and record a document that evidences a partial or full satisfaction and release of the lien, as applicable.

§8308. (a) Except as provided in subdivision (b), no provision of this part applies to a lien created under this chapter. (b) The following provisions of this part apply to a lien created under this chapter: (1) This chapter. (2) Article 1 (commencing with Section 8000) of Chapter 1 of Title 1. (3) Section 8424. (4) Article 6 (commencing with Section 8460) of Chapter 4. (5) Article 7 (commencing with Section 8480) of Chapter 4. (6) Article 8 (commencing with Section 8490) of Chapter 4.

§8310. This chapter does not affect the ability of a design professional to obtain a lien for a work of improvement under Section 8400.

§8312. A design professional shall record a claim of lien under this chapter no later than 90 days after the design professional knows or has reason to know that the work of improvement will not be commenced.

§8314. (a) It is unlawful for any elected state or local officer, including any state or local appointee, employee, or consultant, to use or permit others to use public resources for a campaign activity, or personal or other purposes which are not authorized by law. (b) For purposes of this section: (1)"Personal purpose" means those activities the purpose of which is for personal enjoyment, private gain or advantage, or an outside endeavor not related to state business. "Personal purpose" does not include the incidental and minimal use of public resources, such as equipment or office space, for personal purposes, including an occasional telephone call. (2)"Campaign activity" means an activity constituting a contribution as defined in Section 82015 or an expenditure as defined in Section 82025. "Campaign activity" does not include the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities. (3)"Public resources" means any property or asset owned by the state or any local agency, including, but not limited to, land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and state-compensated time. (4)"Use" means a use of public resources which is substantial enough to result in a gain or advantage to the user or a loss to the state or any local agency for which a monetary value may be estimated. (c)(1)Any person who intentionally or negligently violates this section is liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day on which a violation occurs, plus three times the value of the unlawful use of public resources. The penalty shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 750,000. If two or more persons are responsible for any violation, they shall be jointly and severally liable for the penalty. (2)If the action is brought by the Attorney General, the moneys recovered shall be paid into the General Fund. If the action is brought by a district attorney, the moneys recovered shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney, the moneys recovered shall be paid to the treasurer of that city. (3)No civil action alleging a violation of this section may be commenced more than four years after the date the alleged violation occurred. (d)Nothing in this section shall prohibit the use of public resources for providing information to the public about the possible effects of any bond issue or other ballot measure on state activities, operations, or policies, provided that (1) the informational activities are otherwise authorized by the constitution or laws of this state, and (2) the information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure. (e)The incidental and minimal use of public resources by an elected state or local officer, including any state or local appointee, employee, or consultant, pursuant to this section shall not be subject to prosecution under Section 424 of the Penal Code.

§8316. (a) No lien created under this chapter affects or takes priority over the interest of record of a purchaser, lessee, or encumbrancer, if the interest of the purchaser, lessee, or encumbrancer in the real property was duly recorded before recordation of the claim of lien. (b) No lien created under this chapter affects or takes priority over an encumbrance of a construction lender that funds the loan for the work of improvement for which the design professional provided services.

§8318. A design professional may not obtain a lien under this chapter for services provided for a work of improvement relating to a single-family, owner-occupied residence for which the expected construction cost is less than one hundred thousand dollars (\$100,000).

§8330. For purposes of this chapter, a design professional is a person described in Section 8014 who provides services pursuant to a written contract with a landowner for the design, engineering, or planning of a work of improvement.

§8402. A person that provides work authorized for a site improvement has a lien right under this chapter.

§8404. Work is authorized for a work of improvement or for a site improvement in any of the following circumstances: (a) It is provided at the request of or agreed to by the owner. (b) It is provided or authorized by a direct contractor, subcontractor, architect, project manager, or other person having charge of all or part of the work of improvement or site improvement

§8410. A claimant may enforce a lien only if the claimant has given preliminary notice to the extent required by Chapter 2 (commencing with Section 8200) and made proof of notice.

§8412. A direct contractor may not enforce a lien unless the contractor records a claim of lien after the contractor completes the direct contract, and before the earlier of the following times: (a) Ninety days after completion of the work of improvement. (b) Sixty days after the owner records a notice of completion or cessation.

§8414. A claimant other than a direct contractor may not enforce a lien unless the claimant records a claim of lien within the following times: (a) After the claimant ceases to provide work. (b) Before the earlier of the following times: (1) Ninety days after completion of the work of improvement. (2) Thirty days after the owner records a notice of completion or cessation.

§8416. (a) A claim of mechanics lien shall be a written statement, signed and verified by the claimant, containing all of the following: (1) A statement of the claimant's demand after deducting all just credits and offsets. (2) The name of the owner or reputed owner, if known. (3) A general statement of the kind of work furnished by the claimant. (4) The name of the person by whom the claimant was employed or to whom the claimant furnished work. (5) A description of the site sufficient for identification. (6) The claimant's address. (7) A proof of service affidavit completed and signed by the person serving a copy of the claim of mechanics lien pursuant to subdivision (c). The affidavit shall show the date, place, and manner of service, and facts showing that the service was made in accordance with this section. The affidavit shall show the name and address of the owner or reputed owner upon whom the copy of the claim of mechanics lien was served pursuant to paragraphs (1) or (2) of subdivision (c), and the title or capacity in which the person or entity was served. (8) The following statement, printed in at least 10-point boldface type. The letters of the last sentence shall be printed in uppercase type, excepting the Internet Web site address of the Contractors' State License Board, which shall be printed in lowercase type:

“NOTICE OF MECHANICS LIEN  
ATTENTION!

Upon the recording of the enclosed MECHANICS LIEN with the county recorder's office of the county where the property is located, your property is subject to the filing of a legal action seeking a court-ordered

foreclosure sale of the real property on which the lien has been recorded. That legal action must be filed with the court no later than 90 days after the date the mechanics lien is recorded.

The party identified in the enclosed mechanics lien may have provided labor or materials for improvements to your property and may not have been paid for these items. You are receiving this notice because it is a required step in filing a mechanics lien foreclosure action against your property. The foreclosure action will seek a sale of your property in order to pay for unpaid labor, materials, or improvements provided to your property. This may affect your ability to borrow against, refinance, or sell the property until the mechanics lien is released.

**BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU MAY WISH TO SPEAK WITH YOUR CONTRACTOR IMMEDIATELY, OR CONTACT AN ATTORNEY, OR FOR MORE INFORMATION ON MECHANICS LIENS GO TO THE CONTRACTORS' STATE LICENSE BOARD WEB SITE AT [www.cslb.ca.gov](http://www.cslb.ca.gov)."**

(b) A claim of mechanics lien in otherwise proper form, verified and containing the information required in subdivision (a), shall be accepted by the recorder for recording and shall be deemed duly recorded without acknowledgment. (c) A copy of the claim of mechanics lien, which includes the Notice of Mechanics Lien required by paragraph (8) of subdivision (a), shall be served on the owner or reputed owner. Service shall be made as follows: (1) For an owner or reputed owner to be notified who resides in or outside this state, by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, addressed to the owner or reputed owner at the owner's or reputed owner's residence or place of business address or at the address shown by the building permit on file with the authority issuing a building permit for the work, or as otherwise provided in Section 8174. (2) If the owner or reputed owner cannot be served by this method, then the copy of the claim of mechanics lien may be given by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, addressed to the construction lender or to the original contractor. (d) Service of the copy of the claim of mechanics lien by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, is complete at the time of the deposit of that first-class, certified, or registered mail. (e) Failure to serve the copy of the claim of mechanics lien as prescribed by this section, including the Notice of Mechanics Lien required by paragraph (8) of subdivision (a), shall cause the claim of mechanics lien to be unenforceable as a matter of law.

§8422. (a) Except as provided in subdivisions (b) and (c), erroneous information contained in a claim of lien relating to the claimant's demand, credits and offsets deducted, the work provided, or the description of the site, does not invalidate the claim of lien. (b) Erroneous information contained in a claim of lien relating to the claimant's demand, credits and offsets deducted, or the work provided, invalidates the claim of lien if the court determines either of the following: (1) The claim of lien was made with intent to defraud. (2) An innocent third party, without notice, actual or constructive, became the bona fide owner of the property after recordation of the claim of lien, and the claim of lien was so deficient that it did not put the party on further inquiry in any manner. (c) Any person who shall willfully include in a claim of lien labor, services, equipment, or materials not furnished for the property described in the claim, shall thereby forfeit the person's lien.

§8424. (a) An owner of real property or an owner of any interest in real property subject to a recorded claim of lien, or a direct contractor or subcontractor affected by the claim of lien, that disputes the correctness or validity of the claim may obtain release of the real property from the claim of lien by recording a lien release bond. The principal on the bond may be the owner of the property, the direct contractor, or the subcontractor. (b) The bond shall be conditioned on payment of any judgment and costs the claimant recovers on the lien. The bond shall be in an amount equal to 125 percent of the amount of the claim of lien or 125 percent of the amount allocated in the claim of lien to the real property to be released. The bond shall be executed by an admitted surety insurer. (c) The bond may be recorded either before or after commencement of an action to enforce the lien. On recordation of the bond, the real property is released from the claim of lien and from any action to enforce the lien. (d) A person that obtains and records a lien release bond shall give notice to the claimant. The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1 and shall include a copy of the bond. Failure to give the notice required by this section does not affect the validity of the bond, but the statute of limitations

for an action on the bond is tolled until notice is given. The claimant shall commence an action on the bond within six months after notice is given.

§8430. (a) The lien is a direct lien for the lesser of the following amounts: (1) The reasonable value of the work provided by the claimant. (2) The price agreed to by the claimant and the person that contracted for the work. (b) The lien is not limited in amount by the contract price for the work of improvement except as provided in Section 8600. (c) This section does not preclude the claimant from including in a claim of lien work performed based on a written modification of the contract, or as a result of rescission, abandonment, or breach of the contract. If there is a rescission, abandonment, or breach of the contract, the amount of the lien may not exceed the reasonable value of the work provided by the claimant.

§8432. (a) A lien does not extend to work, whether or not the work is authorized by a direct contractor or subcontractor, if the work is not included in a direct contract or a modification of that contract, and the claimant had actual knowledge or constructive notice of the provisions of that contract or modification before providing the work. (b) The filing of a contract or modification of that contract with the county recorder, before the commencement of a work of improvement, is constructive notice of the provisions of the contract or modification to a person providing work on that work of improvement.

§8434. A direct contractor or a subcontractor may enforce a lien only for the amount due pursuant to that contractor's contract after deducting all lien claims of other claimants for work provided and embraced within that contract.

§8440. Subject to Section 8442, a lien attaches to the work of improvement and to the real property on which the work of improvement is situated, including as much space about the work of improvement as is required for the convenient use and occupation of the work of improvement.

§8442. The following interests in real property to which a lien attaches are subject to the lien: (a) The interest of a person that contracted for the work of improvement. (b) The interest of a person that did not contract for the work of improvement, if work for which the lien is claimed was provided with the knowledge of that person, unless that person gives notice of nonresponsibility under Section 8444.

§8444. (a) An owner of real property or a person claiming an interest in real property on which a work of improvement is situated that did not contract for the work of improvement may give notice of nonresponsibility. (b) A notice of nonresponsibility shall be signed and verified by the owner. (c) The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1. (d) The notice shall also include all of the following information: (1) The nature of the owner's title or interest. (2) The name of a purchaser under contract, if any, or lessee, if known. (3) A statement that the person giving the notice is not responsible for claims arising from the work of improvement. (e) A notice of nonresponsibility is not effective unless, within 10 days after the person giving notice has knowledge of the work of improvement, the person both posts and records the notice.

§8446. A claimant may record one claim of lien on two or more works of improvement, subject to the following conditions: (a) The works of improvement have or are reputed to have the same owner, or the work was contracted for by the same person for the works of improvement whether or not they have the same owner. (b) The claimant in the claim of lien designates the amount due for each work of improvement. If the claimant contracted for a lump sum payment for work provided for the works of improvement and the contract does not segregate the amount due for each work of improvement separately, the claimant may estimate an equitable distribution of the amount due for each work of improvement based on the proportionate amount of work provided for each. If the claimant does not designate the amount due for each work of improvement, the lien is subordinate to other liens. (c) If there is a single structure on real property of different owners, the claimant need not segregate the proportion of work provided for the portion of the structure situated on real property of each owner. In the lien enforcement action the court may, if it determines it equitable to do so, designate an equitable distribution of the lien among the real property of the owners. (d) The lien does not extend beyond the amount designated as against other creditors having liens, by judgment, mortgage, or otherwise, on either the works of improvement or the real property on which the works of improvement are situated.



§8448. (a) As used in this section, “separate residential unit” means one residential structure, including a residential structure containing multiple condominium units, together with any common area, garage, or other appurtenant improvements. (b) If a work of improvement consists of the construction of two or more separate residential units: (1) Each unit is deemed a separate work of improvement, and completion of each unit is determined separately for purposes of the time for recording a claim of lien on that unit. This paragraph does not affect any lien right under Section 8402 or 8446. (2) Material provided for the work of improvement is deemed to be provided for use or consumption in each separate residential unit in which the material is actually used or consumed; but if the claimant is unable to segregate the amounts used or consumed in separate residential units, the claimant has the right to all the benefits of Section 8446.

§8450. (a) A lien under this chapter, other than a lien provided for in Section 8402, has priority over a lien, mortgage, deed of trust, or other encumbrance on the work of improvement or the real property on which the work of improvement is situated, that (1) attaches after commencement of the work of improvement or (2) was unrecorded at the commencement of the work of improvement and of which the claimant had no notice. (b) Subdivision (a) is subject to the exception provided for in Section 8452.

§8452. A mortgage or deed of trust, otherwise subordinate to a lien under Section 8450, has priority over a lien for work provided after recordation of a payment bond that satisfies all of the following requirements: (a) The bond refers to the mortgage or deed of trust. (b) The bond is in an amount not less than 75 percent of the principal amount of the mortgage or deed of trust.

§8454. If a site improvement is provided for in a direct contract separate from the direct contract for the remainder of the work of improvement, the site improvement is deemed a separate work of improvement and commencement of the site improvement is not commencement of the remainder of the work of improvement.

§8456. (a) This section applies to a construction loan secured by a mortgage or deed of trust that has priority over a lien under this chapter. (b) An optional advance of funds by the construction lender that is used for construction costs has the same priority as a mandatory advance of funds by the construction lender, provided that the total of all advances does not exceed the amount of the original construction loan.

§8458. (a) Except as provided in subdivision (b), a lien provided for in Section 8402 has priority over: (1) A mortgage, deed of trust, or other encumbrance that attaches after commencement of the site improvement. (2) A mortgage, deed of trust, or other encumbrance that was unrecorded at the commencement of the site improvement and of which the claimant had no notice. (3) A mortgage, deed of trust, or other encumbrance that was recorded before commencement of the site improvement, if given for the sole or primary purpose of financing the site improvement. This subdivision does not apply if the loan proceeds are, in good faith, placed in the control of the lender pursuant to a binding agreement with the borrower to the effect that (A) the proceeds are to be applied to the payment of claimants and (B) no portion of the proceeds will be paid to the borrower in the absence of satisfactory evidence that all claims have been paid or that the time for recording a claim of lien has expired and no claim of lien has been recorded. (b) A mortgage or deed of trust, otherwise subordinate under subdivision (a), has priority over a lien provided for in Section 8402 if a payment bond in an amount not less than 50 percent of the principal amount of the mortgage or deed of trust is recorded before completion of the work of improvement

§8460. (a) The claimant shall commence an action to enforce a lien within 90 days after recordation of the claim of lien. If the claimant does not commence an action to enforce the lien within that time, the claim of lien expires and is unenforceable. (b) Subdivision (a) does not apply if the claimant and owner agree to extend credit, and notice of the fact and terms of the extension of credit is recorded (1) within 90 days after recordation of the claim of lien or (2) more than 90 days after recordation of the claim of lien but before a purchaser or encumbrancer for value and in good faith acquires rights in the property. In that event the claimant shall commence an action to enforce the lien within 90 days after the expiration of the credit, but in no case later than one year after completion of the work of improvement. If the claimant does not commence an action to enforce the lien within that time, the claim of lien expires and is unenforceable.

§8461. After commencement of an action to enforce a lien, the plaintiff shall record in the office of the county recorder of the county, or of the several counties in which the property is situated, a notice of the pendency of the action, as provided in Title 4.5 (commencing with Section 405) of Part 2 of the Code of Civil Procedure, on or before 20 days after the commencement of the action. Only from the time of recording that notice shall a purchaser or encumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and in that event only of its pendency against parties designated by their real names.

§8462. Notwithstanding Section 583.420 of the Code of Civil Procedure, if an action to enforce a lien is not brought to trial within two years after commencement of the action, the court may in its discretion dismiss the action for want of prosecution.

§8464. In addition to any other costs allowed by law, the court in an action to enforce a lien shall allow as costs to each claimant whose lien is established the amount paid to verify and record the claim of lien, whether the claimant is a plaintiff or defendant.

§8466. If there is a deficiency of proceeds from the sale of property on a judgment for enforcement of a lien, a deficiency judgment may be entered against a party personally liable for the deficiency in the same manner and with the same effect as in an action to foreclose a mortgage.

§8468. (a) This chapter does not affect any of the following rights of a claimant: (1) The right to maintain a personal action to recover a debt against the person liable, either in a separate action or in an action to enforce a lien. (2) The right to a writ of attachment. In an application for a writ of attachment, the claimant shall refer to this section. The claimant's recording of a claim of lien does not affect the right to a writ of attachment. (3) The right to enforce a judgment. (b) A judgment obtained by the claimant in a personal action described in subdivision (a) does not impair or merge the claim of lien, but any amount collected on the judgment shall be credited on the amount of the lien.

§8470. In an action to enforce a lien for work provided to a contractor: (a) The contractor shall defend the action at the contractor's own expense. During the pendency of the action the owner may withhold from the direct contractor the amount of the lien claim. (b) If the judgment in the action is against the owner or the owner's property, the owner may deduct the amount of the judgment and costs from any amount owed to the direct contractor. If the amount of the judgment and costs exceeds the amount owed to the direct contractor, or if the owner has settled with the direct contractor in full, the owner may recover from the direct contractor, or the sureties on a bond given by the direct contractor for faithful performance of the direct contract, the amount of the judgment and costs that exceed the contract price and for which the direct contractor was originally liable.

§8480. (a) The owner of property or the owner of any interest in property subject to a claim of lien may petition the court for an order to release the property from the claim of lien if the claimant has not commenced an action to enforce the lien within the time provided in Section 8460. (b) This article does not bar any other cause of action or claim for relief by the owner of the property. A release order does not bar any other cause of action or claim for relief by the claimant, other than an action to enforce the claim of lien that is the subject of the release order. (c) A petition for a release order under this article may be joined with a pending action to enforce the claim of lien that is the subject of the petition. No other action or claim for relief may be joined with a petition under this article. (d) Notwithstanding Section 8056, Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure does not apply to a proceeding under this article.

§8484. A petition for a release order shall be verified and shall allege all of the following: (a) The date of recordation of the claim of lien. A certified copy of the claim of lien shall be attached to the petition. (b) The county in which the claim of lien is recorded. (c) The book and page or series number of the place in the official records where the claim of lien is recorded. (d) The legal description of the property subject to the claim of lien. (e) Whether an extension of credit has been granted under Section 8460, if so to what date, and that the time for commencement of an action to enforce the lien has expired. (f) That the owner has given the claimant notice under Section 8482 demanding that the claimant execute and record a release

of the lien and that the claimant is unable or unwilling to do so or cannot with reasonable diligence be found. (g) Whether an action to enforce the lien is pending. (h) Whether the owner of the property or interest in the property has filed for relief in bankruptcy or there is another restraint that prevents the claimant from commencing an action to enforce the lien.

§8486. (a) On the filing of a petition for a release order, the clerk shall set a hearing date. The date shall be not more than 30 days after the filing of the petition. The court may continue the hearing only on a showing of good cause, but in any event the court shall rule and make any necessary orders on the petition not later than 60 days after the filing of the petition. (b) The petitioner shall serve a copy of the petition and a notice of hearing on the claimant at least 15 days before the hearing. Service shall be made in the same manner as service of summons, or by certified or registered mail, postage prepaid, return receipt requested, addressed to the claimant as provided in Section 8108. (c) Notwithstanding Section 8116, when service is made by mail, service is complete on the fifth day following deposit of the petition and notice in the mail.

§8488. (a) At the hearing both (1) the petition and (2) the issue of compliance with the service and date for hearing requirements of this article are deemed controverted by the claimant. The petitioner has the initial burden of producing evidence on those matters. The petitioner has the burden of proof as to the issue of compliance with the service and date for hearing requirements of this article. The claimant has the burden of proof as to the validity of the lien. (b) If judgment is in favor of the petitioner, the court shall order the property released from the claim of lien. (c) The prevailing party is entitled to reasonable attorney's fees

§8490. (a) A court order dismissing a cause of action to enforce a lien or releasing property from a claim of lien, or a judgment that no lien exists, shall include all of the following information: (1) The date of recordation of the claim of lien. (2) The county in which the claim of lien is recorded. (3) The book and page or series number of the place in the official records where the claim of lien is recorded. (4) The legal description of the property. (b) A court order or judgment under this section is equivalent to cancellation of the claim of lien and its removal from the record. (c) A court order or judgment under this section is a recordable instrument. On recordation of a certified copy of the court order or judgment, the property described in the order or judgment is released from the claim of lien. (d) This section does not apply to a court order dismissing an action to enforce a lien that is expressly stated to be without prejudice.

§8500. The rights of all persons furnishing work for any work of improvement, with respect to any fund for payment of construction costs, are governed exclusively by this chapter, and no person may assert any legal or equitable right with respect to the fund, other than a right created by a written contract between that person and the person holding the fund, except pursuant to the provisions of this chapter.

§8502. (a) A stop payment notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1, and shall be signed and verified by the claimant. (b) The notice shall include a general description of work to be provided, and an estimate of the total amount in value of the work to be provided. (c) The amount claimed in the notice may include only the amount due the claimant for work provided through the date of the notice.

§8504. A claimant that willfully gives a false stop payment notice or that willfully includes in the notice a demand to withhold for work that has not been provided forfeits all right to participate in the distribution of the funds withheld and all right to a lien under Chapter 4 (commencing with Section 8400).

§8506. (a) A stop payment notice to an owner shall be given to the owner or to the owner's architect, if any. (b) A stop payment notice to a construction lender holding construction funds shall not be effective unless given to the manager or other responsible officer or person at the office or branch of the lender administering or holding the construction funds. (c) A stop payment notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

§8508. A stop payment notice is not valid unless both of the following conditions are satisfied: (a) The claimant gave preliminary notice to the extent required by Chapter 2 (commencing with Section 8200). (b) The claimant gave the stop payment notice before expiration of the time within which a claim of lien must be recorded under Chapter 4 (commencing with Section 8400).

§8510. (a) A person may obtain release of funds withheld pursuant to a stop payment notice by giving the person withholding the funds a release bond. (b) A release bond shall be given by an admitted surety insurer and shall be conditioned for payment of any amount not exceeding the penal obligation of the bond that the claimant recovers on the claim, together with costs of suit awarded in the action. The bond shall be in an amount equal to 125 percent of the amount claimed in the stop payment notice. (c) On receipt of a release bond, the person withholding funds pursuant to the stop payment notice shall release them.

§8520. (a) A person that has a lien right under Chapter 4 (commencing with Section 8400), other than a direct contractor, may give the owner a stop payment notice. (b) The owner may give notice, in compliance with the requirements of Chapter 2 (commencing with Section 8100) of Title 1, demanding that a person that has a lien right under Chapter 4 (commencing with Section 8400) give the owner a stop payment notice. If the person fails to give the owner a bonded or unbonded stop payment notice, the person forfeits the right to a lien under Chapter 4 (commencing with Section 8400).

§8522. (a) Except as provided in subdivision (b), on receipt of a stop payment notice an owner shall withhold from the direct contractor or from any person acting under authority of a direct contractor a sufficient amount due or to become due to the direct contractor to pay the claim stated in the notice. (b) The owner may, but is not required to, withhold funds if the owner has previously recorded a payment bond under Section 8600. If the owner does not withhold funds, the owner shall, within 30 days after receipt of the stop payment notice, give notice to the claimant that a payment bond has been recorded and provide the claimant a copy of the bond. The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

§8530. A person that has a lien right under Chapter 4 (commencing with Section 8400) may give a construction lender a stop payment notice.

§8532. A claimant may give a construction lender a stop payment notice accompanied by a bond in an amount equal to 125 percent of the amount of the claim. The bond shall be conditioned that if the defendant recovers judgment in an action to enforce payment of the claim stated in the stop payment notice or to enforce a claim of lien recorded by the claimant, the claimant will pay all costs that are awarded the owner, direct contractor, or construction lender, and all damages to the owner, direct contractor, or construction lender that result from the stop payment notice or recordation of the claim of lien, not exceeding the amount of the bond.

§8534. (a) A construction lender that objects to the sufficiency of sureties on the bond given with a bonded stop payment notice shall give notice to the claimant of the objection, within 20 days after the bonded stop payment notice is given. The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1. (b) The claimant may within 10 days after notice of the objection is given substitute for the initial bond a bond executed by an admitted surety insurer. If the claimant does not substitute a bond executed by an admitted surety insurer, the construction lender may disregard the bonded stop payment notice and release all funds withheld in response to that notice.

§8536. (a) Except as provided in subdivision (b), on receipt of a stop payment notice a construction lender shall withhold from the borrower or other person to whom the lender or the owner is obligated to make payments or advancement out of the construction fund sufficient funds to pay the claim stated in the notice. (b) The construction lender may, at its option, elect not to withhold funds in any of the following circumstances: (1) The stop payment notice is unbonded. (2) The stop payment notice is given by a claimant other than a direct contractor, and a payment bond is recorded before the lender is given any stop payment notice.

§8538. (a) The claimant may make a written request for notice of an election by the construction lender under Section 8536 not to withhold funds. The request shall be made at the time the claimant gives the construction lender the stop payment notice and shall be accompanied by a preaddressed, stamped envelope. (b) If the construction lender elects not to withhold funds under Section 8536, the lender shall, within 30 days after making the election, give notice of that fact to a claimant who has requested notice of

the election under subdivision (a). The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1. If the basis of the election is the recordation of a payment bond under Section 8600, the construction lender shall include a copy of the bond with the notice. (c) A construction lender is not liable for failure to include a copy of the bond with the notice under this section if all of the following conditions are satisfied: (1) The failure was not intentional and resulted from a bona fide error. (2) The lender maintains reasonable procedures to avoid an error of that type. (3) The lender corrected the error not later than 20 days after the date the lender discovered the violation.

§8540. (a) Funds withheld pursuant to a stop payment notice shall be distributed in the following order of priority: (1) First, to pay claims of persons that have given a bonded stop payment notice. If funds are insufficient to pay the claims of those persons in full, the funds shall be distributed pro rata among the claimants in the ratio that the claim of each bears to the aggregate of all claims for which a bonded stop payment notice is given. (2) Second, to pay claims of persons that have given an unbonded stop payment notice. If funds are insufficient to pay the claims of those persons in full, the funds shall be distributed among the claimants in the ratio that the claim of each bears to the aggregate of all claims for which an unbonded stop payment notice is given. (b) Pro rata distribution under this section shall be made among the persons entitled to share in the distribution without regard to the order in which the person has given a stop payment notice or commenced an enforcement action.

§8542. Notwithstanding Section 8540: (a) If funds are withheld pursuant to a stop payment notice given to a construction lender by a direct contractor or subcontractor, the direct contractor or subcontractor may recover only the net amount due the direct contractor or subcontractor after deducting any funds that are withheld by the construction lender pursuant to the claims of subcontractors and material suppliers that have given a stop payment notice for work done on behalf of the direct contractor or subcontractor. (b) In no event is the construction lender required to withhold, pursuant to a stop payment notice, more than the net amount provided in subdivision (a). Notwithstanding any other provision of this chapter, a construction lender is not liable for failure to withhold more than that net amount on receipt of a stop payment notice.

§8544. The rights of a claimant who gives a construction lender a stop payment notice are not affected by an assignment of construction loan funds made by the owner or direct contractor, and the stop payment notice has priority over the assignment, whether the assignment is made before or after the stop payment notice is given.

§8550. (a) A claimant shall commence an action to enforce payment of the claim stated in a stop payment notice at any time after 10 days from the date the claimant gives the stop payment notice. (b) A claimant shall commence an action to enforce payment of the claim stated in a stop payment notice not later than 90 days after expiration of the time within which a stop payment notice must be given. (c) An action under this section may not be brought to trial or judgment entered before expiration of the time provided in subdivision (b). (d) If a claimant does not commence an action to enforce payment of the claim stated in a stop payment notice within the time prescribed in subdivision (b), the notice ceases to be effective and the person withholding funds pursuant to the notice shall release them. (e) Within five days after commencement of an action to enforce payment of the claim stated in a stop payment notice, the claimant shall give notice of commencement of the action to the persons to whom the stop payment notice was given. The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

§8552. If more than one claimant has given a stop payment notice: (a) Any number of claimants may join in the same enforcement action. (b) If claimants commence separate actions, the court first acquiring jurisdiction may order the actions consolidated. (c) On motion of the owner or construction lender the court shall require all claimants to be impleaded in one action, to the end that the rights of all parties may be adjudicated in the action.

§8554. Notwithstanding Section 583.420 of the Code of Civil Procedure, if an action to enforce payment of the claim stated in a stop payment notice is not brought to trial within two years after commencement of the action, the court may in its discretion dismiss the action for want of prosecution.

§8556. A stop payment notice ceases to be effective, and a person withholding funds pursuant to the notice shall release them, in either of the following circumstances: (a) An action to enforce payment of the claim stated in the stop payment notice is dismissed, unless expressly stated to be without prejudice. (b) Judgment in an action to enforce payment of the claim stated in the stop payment notice is against the claimant.

§8558. (a) In an action to enforce payment of the claim stated in a bonded stop payment notice, the prevailing party is entitled to a reasonable attorney's fee in addition to costs and damages. (b) The court, on notice and motion by a party, shall determine who is the prevailing party or that there is no prevailing party for the purpose of this section, regardless of whether the action proceeds to final judgment. The prevailing party is the party that recovers greater relief in the action, subject to the following limitations: (1) If the action is voluntarily dismissed or dismissed pursuant to a settlement, there is no prevailing party. (2) If the defendant tenders to the claimant the full amount to which the claimant is entitled, and deposits in court for the claimant the amount so tendered, and alleges those facts in the answer and the allegation is determined to be true, the defendant is deemed to be the prevailing party.

§8560. If the claimant is the prevailing party in an action to enforce payment of the claim stated in a bonded stop payment notice, any amount awarded on the claim shall include interest at the legal rate calculated from the date the stop payment notice is given.

§9566. (a) A claimant does not have a right to recover on a payment bond unless the claimant provided work to the direct contractor either directly or through one or more subcontractors pursuant to a public works contract. (b) Nothing in this section affects the stop payment notice rights of, and relative priorities among, design professionals.

§8600. (a) This section applies if, before the commencement of work, the owner in good faith files a direct contract with the county recorder, and records a payment bond of the direct contractor in an amount not less than 50 percent of the price stated in the direct contract. (b) If the conditions of subdivision (a) are satisfied, the court shall, where equitable to do so, restrict lien enforcement under this title to the aggregate amount due from the owner to the direct contractor and shall enter judgment against the direct contractor and surety on the bond for any deficiency that remains between the amount due to the direct contractor and the whole amount due to claimants.

§8602. Section 8600 does not preclude an owner from requiring a performance bond, payment bond, or other security as protection against a direct contractor's failure to perform the direct contract or to make full payment for all work provided pursuant to the contract.

§8604. (a) If a lending institution requires that a payment bond be given as a condition of lending money to finance a work of improvement, and accepts in writing as sufficient a bond given in fulfillment of the requirement, the lending institution may not thereafter object to the borrower as to the validity of the bond or refuse to make the loan based on an objection to the bond if the bond is given by an admitted surety insurer. (b) For purposes of this section, a "lending institution" includes a commercial bank, savings and loan institution, credit union, or other organization or person engaged in the business of financing loans.

§8606. (a) A payment bond under this title shall be conditioned for the payment in full of the claims of all claimants and shall by its terms inure to the benefit of all claimants so as to give a claimant a right of action to enforce the liability on the bond. The bond shall be given by an admitted surety insurer. (b) An owner, direct contractor, or subcontractor may be the principal on the bond. (c) A claimant may enforce the liability on the bond in an action to enforce a lien under this part or in a separate action on the bond.

§8609 Any provision in a payment bond attempting by contract to shorten the period prescribed in Section 337 of the Code of Civil Procedure for the commencement of an action on the bond shall not be valid under either of the following circumstances: (a) If the provision attempts to limit the time for commencement of an action on the bond to a shorter period than six months from the completion of any work of improvement. (b) As applied to any action brought by a claimant, unless the bond is recorded before the work of improvement is commenced.

§8608. (a) This title does not give a claimant a right to recover on a direct contractor's payment bond given under this chapter unless the claimant provided work to the direct contractor either directly or through one

or more subcontractors, pursuant to a direct contract. (b) Nothing in this section affects the stop payment notice right of, and relative priorities among, design professionals and holders of secured interests in the real property.

§8610. Notwithstanding Section 8609, if a payment bond under this title is recorded before completion of a work of improvement, an action to enforce the liability on the bond may not be commenced later than six months after completion of the work of improvement.

§8612. (a) In order to enforce a claim against a payment bond under this title, a claimant shall give the preliminary notice provided in Chapter 2 (commencing with Section 8200). (b) If preliminary notice was not given as provided in Chapter 2 (commencing with Section 8200), a claimant may enforce a claim 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 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. (c) Commencing July 1, 2012, and except as provided in subdivision (b), if the preliminary notice was required to be given by a person who has no direct contractual relationship with the contractor, and who has not given notice as provided in Chapter 2 (commencing with Section 8200), that person may enforce a claim by giving written notice to the surety and the bond principal, as provided in Section 8614, within 15 days after recordation of a notice of completion. If no notice of completion has been 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. (d) Subdivision (c) shall not apply in either of the following circumstances: (1) All progress payments, except for those disputed in good faith, have been made to a subcontractor who has a direct contractual relationship with the general contractor to whom the claimant has provided materials or services. (2) The subcontractor who has a direct contractual relationship with the general contractor to whom the claimant has provided materials or services has been terminated from the project pursuant to the contract, and all progress payments, except those disputed in good faith, have been made as of the termination date. (e) Pursuant to Section 8200, this section shall not apply to a laborer, as defined under Section 802(f) This section shall become operative on July 1, 2012.

§8614. Notice to the principal and surety under Section 8612 shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

§8700. (a) This chapter applies if any of the following conditions is satisfied: (1) The owner of the fee interest in property contracts for a work of improvement on the property with a contract price greater than five million dollars (\$5,000,000). (2) The owner of a less than fee interest in property, including a leasehold interest, contracts for a work of improvement on the property with a contract price greater than one million dollars (\$1,000,000). (b) For the purpose of this section: (1) The owner of the fee interest in property is not deemed to be the owner of a less than fee interest by reason of a mortgage, deed of trust, ground lease, or other lien or encumbrance or right of occupancy that encumbers the fee interest. (2) A lessee of real property is deemed to be the owner of a fee interest in the real property if all of the following conditions are satisfied: (A) The initial term of the lease is at least 35 years. (B) The lease covers one or more lawful parcels under the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code, and any applicable local ordinance adopted under that act, in their entirety, including, but not limited to, a parcel approved pursuant to a certificate of compliance proceeding.

§8710. An owner described in subdivision (a) of Section 8700 shall provide the direct contractor all of the following: (a) Security for the owner's payment obligation pursuant to the contract. The security shall be used only if the owner defaults on the payment obligation to the direct contractor. This subdivision does not apply to an owner that is the majority owner of the direct contractor. (b) A copy, certified by the county recorder, of any recorded mortgage or deed of trust that secures the construction loan of a lending institution for the work of improvement, disclosing the amount of the loan.

§8714. It is against public policy to waive the provisions of this chapter by contract.

§8716. This chapter does not affect any statute providing for mechanics liens, stop payment notices, bond remedies, or prompt payment rights of a subcontractor, including the direct contractor's payment responsibilities under Section 7108.5 of the Business and Professions Code.

§8720. An owner shall provide security by any of the following means: (a) A bond that satisfies Section 8722. (b) An irrevocable letter of credit that satisfies Section 8724. (c) An escrow account that satisfies Section 8726.

§8722. A bond under this chapter shall satisfy all of the following requirements: (a) The bond shall be executed by an admitted surety insurer that is either listed in the Department of the Treasury's Listing of Approved Sureties (Department Circular 570) or that has an A.M. Best rating of A or better and has an underwriting limitation, under Section 12090 of the Insurance Code, greater than the amount of the bond. (b) The bond shall be in an amount not less than 15 percent of the contract price for the work of improvement or, if the work of improvement is to be substantially completed within six months after the commencement of work, not less than 25 percent of the contract price. (c) The bond shall be conditioned for payment on default by the owner of any undisputed amount pursuant to the contract that is due and payable for more than 30 days.

§8724. An irrevocable letter of credit under this chapter shall satisfy all of the following requirements: (a) The letter of credit shall be issued by a financial institution, as defined in Section 5107 of the Financial Code, inuring to the benefit of the direct contractor. (b) The letter of credit shall be in an amount not less than 15 percent of the contract price for the work of improvement or, if the work of improvement is to be substantially completed within six months after the commencement of work, not less than 25 percent of the contract price. (c) The maturity date and other terms of the letter of credit shall be determined by agreement between the owner, the direct contractor, and the financial institution, except that the owner shall maintain the letter of credit in effect until the owner has satisfied its payment obligation to the direct contractor.

§8726. An escrow account under this chapter shall satisfy all of the following requirements: (a) The account shall be designated as a "construction security escrow account." (b) The account shall be located in this state and maintained with an escrow agent licensed under the Escrow Law, Division 6 (commencing with Section 17000) of the Financial Code, or with any person exempt from the Escrow Law under paragraph (1) or (3) of subdivision (a) of Section 17006 of the Financial Code. (c) The owner shall deposit funds in the account in the amount provided in Section 8728. This chapter does not require a construction lender to agree to deposit proceeds of a construction loan in the account. (d) The owner shall grant the direct contractor a perfected, first priority security interest in the account and in all funds deposited by the owner in the account and in their proceeds, established to the reasonable satisfaction of the direct contractor, which may be by a written opinion of legal counsel for the owner. (e) The funds on deposit in the account shall be the sole property of the owner, subject to the security interest of the direct contractor. The owner and the direct contractor shall instruct the escrow holder to hold the funds on deposit in the account for the purpose of perfecting the direct contractor's security interest in the account and to disburse those funds only on joint authorization of the owner and the direct contractor, or pursuant to a court order that is binding on both of them.

§8728. The following provisions govern a deposit to or disbursement from a construction security escrow account under this chapter: (a) Before the commencement of work the owner shall make an initial deposit to the account in an amount not less than 15 percent of the contract price for the work of improvement or, if the work of improvement is to be substantially completed within six months after the commencement of work, not less than 25 percent of the contract price. (b) If the contract provides for a retention to be withheld from a periodic payment to the direct contractor, the owner shall deposit to the account the amount withheld as retention at the time the owner makes the corresponding payment to the direct contractor from which the retention is withheld. (c) The amount required to be maintained on deposit shall not exceed the total amount remaining to be paid to the direct contractor pursuant to the contract or as adjusted by agreement between the owner and the direct contractor. If the amount on deposit equals or exceeds the total amount remaining to be paid to the direct contractor, the owner and the direct contractor shall authorize disbursement to the direct contractor for progress payments then due the direct contractor, but a party is not obligated to authorize disbursement that would cause the amount remaining on deposit



following the disbursement to be less than the total amount remaining to be paid to the direct contractor.

(d) The owner and the direct contractor shall authorize the disbursement to the owner of any funds remaining on deposit after the direct contractor has been paid all amounts due pursuant to the contract. The owner and the direct contractor shall authorize the disbursement of funds on deposit pursuant to a court order that is binding on both of them. The owner and the direct contractor may agree in the contract to additional conditions for the disbursement of funds on deposit, except that the conditions may not cause the amount remaining on deposit to be less than the amount required under this section.

§8730. If the contract price for a work of improvement is not a fixed price, the amount of security provided under this chapter shall be the guaranteed maximum price or, if there is no guaranteed maximum price, the owner's and direct contractor's good faith estimate of the reasonable value of the work to be provided pursuant to the contract.

§8800. (a) Except as otherwise agreed in writing by the owner and direct contractor, the owner shall pay the direct contractor, within 30 days after notice demanding payment pursuant to the contract is given, any progress payment due as to which there is no good faith dispute between them. The notice given shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1. (b) If there is a good faith dispute between the owner and direct contractor as to a progress payment due, the owner may withhold from the progress payment an amount not in excess of 150 percent of the disputed amount. (c) An owner that violates this section is liable to the direct contractor for a penalty of 2 percent per month on the amount wrongfully withheld, in place of any interest otherwise due. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to costs and a reasonable attorney's fee. (d) This section does not supersede any requirement of Article 2 (commencing with Section 8810) relating to the withholding of a retention.

§8802. (a) This section applies to a contract between a public utility and a direct contractor for all or part of a work of improvement. (b) Unless the direct contractor and a subcontractor otherwise agree in writing, within 21 days after receipt of a progress payment from the public utility the direct contractor shall pay the subcontractor the amount allowed the direct contractor on account of the work performed by the subcontractor to the extent of the subcontractor's interest in the work. If there is a good faith dispute over all or part of the amount due on a progress payment from the direct contractor to a subcontractor, the direct contractor may withhold an amount not in excess of 150 percent of the disputed amount. (c) A direct contractor that violates this section is liable to the subcontractor for a penalty of 2 percent of the disputed amount due per month for every month that payment is not made. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to costs and a reasonable attorney's fee. (d) This section does not limit or impair a contractual, administrative, or judicial remedy otherwise available to a contractor or subcontractor in a dispute involving late payment or nonpayment by the contractor or deficient performance or nonperformance by the subcontractor

§8810. This article governs a retention payment withheld by an owner from a direct contractor or by a direct contractor from a subcontractor.

§8812. (a) If an owner withholds a retention from a direct contractor, the owner shall, within 45 days after completion of the work of improvement, pay the retention to the contractor. (b) If part of a work of improvement ultimately will become the property of a public entity, the owner may condition payment of a retention allocable to that part on acceptance of the part by the public entity. (c) If there is a good faith dispute between the owner and direct contractor as to a retention payment due, the owner may withhold from final payment an amount not in excess of 150 percent of the disputed amount.

§8814. (a) If a direct contractor has withheld a retention from one or more subcontractors, the direct contractor shall, within 10 days after receiving all or part of a retention payment, pay to each subcontractor from whom retention has been withheld that subcontractor's share of the payment. (b) If a retention received by the direct contractor is specifically designated for a particular subcontractor, the direct contractor shall pay the retention payment to the designated subcontractor, if consistent with the terms of the subcontract. (c) If a good faith dispute exists between the direct contractor and a subcontractor, the

direct contractor may withhold from the retention to the subcontractor an amount not in excess of 150 percent of the estimated value of the disputed amount.

§8816. (a) If a direct contractor has withheld a retention from one or more subcontractors, the direct contractor shall, within 10 days after receiving all or part of a retention payment, pay to each subcontractor from whom retention has been withheld that subcontractor's share of the payment. (b) If a retention received by the direct contractor is specifically designated for a particular subcontractor, the direct contractor shall pay the retention payment to the designated subcontractor, if consistent with the terms of the subcontract. (c) If a good faith dispute exists between the direct contractor and a subcontractor, the direct contractor may withhold from the retention to the subcontractor an amount not in excess of 150 percent of the estimated value of the disputed amount.

§8818. If an owner or direct contractor does not make a retention payment within the time required by this article: (a) The owner or direct contractor is liable to the person to which payment is owed for a penalty of 2 percent per month on the amount wrongfully withheld, in place of any interest otherwise due. (b) In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to costs and reasonable attorney's fees.

§8820. It is against public policy to waive the provisions of this article by contract.

§8822. This article does not apply to a retention payment withheld by a lender pursuant to a construction loan agreement.

§8838. (a) The direct contractor or the direct contractor's surety, or a subcontractor or a subcontractor's surety, is not liable for delay or damage that the owner or a contractor of a subcontractor may suffer as a result of the direct contractor giving a stop work notice and subsequently stopping work for nonpayment, if the notice and posting requirements of this article are satisfied. (b) A direct contractor's or original subcontractor's liability to a subcontractor or material supplier after the direct contractor stops work under this article is limited to the amount the subcontractor or material supplier could otherwise recover under this title for work provided up to the date the subcontractor or material supplier ceases work, subject to the following exceptions: (1) The direct contractor's or original subcontractor's liability continues for work provided up to and including the 10-day notice period and not beyond. (2) This subdivision does not limit liability for custom work, including materials that have been fabricated, manufactured, or ordered to specifications that are unique to the job.

§8842. A direct contractor's right to stop work under this article is in addition to other rights the direct contractor may have under the law.

§8844. (a) If payment of the amount claimed is not made within 10 days after a stop work notice is given, the direct contractor, the direct contractor's surety, or an owner may in an expedited proceeding in the superior court in the county in which the private work of improvement is located, seek a judicial determination of liability for the amount due. (b) The expedited proceeding shall be set for hearing or trial at the earliest possible date in order that it shall be quickly heard and determined, and shall take precedence over all other cases except older matter of the same character and other matters to which special precedence has been given.

§8846. It is against public policy to waive the provisions of this article by contract.

§8848. (a) This article applies to a contract entered into on or after January 1, 1999. (b) This article does not apply to a retention withheld by a lender pursuant to a construction loan agreement.

§9000. This title applies to a work of improvement contracted for by a public entity.

§9100. (a) Except as provided in subdivision (b), any of the following persons that have not been paid in full may give a stop payment notice to the public entity or assert a claim against a payment bond: (1) A person that provides work for a public works contract, if the work is authorized by a direct contractor,

subcontractor, architect, project manager, or other person having charge of all or part of the public works contract. (2) A laborer. (3) A person described in Section 4107.7 of the Public Contract Code. (b) A direct contractor may not give a stop payment notice or assert a claim against a payment bond under this title.

§9200. For the purpose of this title, completion of a work of improvement occurs at the earliest of the following times: (a) Acceptance of the work of improvement by the public entity. (b) Cessation of labor on the work of improvement for a continuous period of 60 days. This subdivision does not apply to a contract awarded under the State Contract Act, Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

§9202. (a) A public entity may record a notice of cessation if there has been a continuous cessation of labor for at least 30 days prior to the recordation that continues through the date of the recordation. (b) The notice shall be signed and verified by the public entity or its agent. (c) The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1, and shall also include all of the following information: (1) The date on or about which the labor ceased. (2) A statement that the cessation has continued until the recordation of the notice.

§9204. (a) A public entity may record a notice of completion on or within 15 days after the date of completion of a work of improvement. (b) The notice shall be signed and verified by the public entity or its agent. (c) The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1, and shall also include the date of completion. An erroneous statement of the date of completion does not affect the effectiveness of the notice if the true date of completion is 15 days or less before the date of recordation of the notice.

§9208. A notice of completion in otherwise proper form, verified and containing the information required by this title shall be accepted by the recorder for recording and is deemed duly recorded without acknowledgment.

§9300. (a) Except as otherwise provided by statute, before giving a stop payment notice or asserting a claim against a payment bond, a claimant shall give preliminary notice to the following persons: (1) The public entity. (2) The direct contractor to which the claimant provides work. (b) Notwithstanding subdivision (a): (1) A laborer is not required to give preliminary notice. (2) A claimant that has a direct contractual relationship with a direct contractor is not required to give preliminary notice. (c) Compliance with this section is a necessary prerequisite to the validity of a stop payment notice under this title. (d) Compliance with this section or with Section 9562 is a necessary prerequisite to the validity of a claim against a payment bond under this title.

§9302. (a) Except as provided in subdivision (b), preliminary notice shall be given in compliance with the requirements of Chapter 2 (commencing with Section 8100) of Title 1. (b) If the public works contract is for work constructed by the Department of Public Works or the Department of General Services of the state, preliminary notice to the public entity shall be given to the disbursing officer of the department constructing the work.

§9303. The preliminary notice shall comply with the requirements of Section 8102, and shall also include: (a) A general description of the work to be provided. (b) An estimate of the total price of the work provided and to be provided.

§9304. A claimant may give a stop payment notice or assert a claim against a payment bond only for work provided within 20 days before giving preliminary notice and at any time thereafter.

§9306. If the contract of any subcontractor on a particular work of improvement provides for payment to the subcontractor of more than four hundred dollars (\$400), the failure of that subcontractor, licensed under the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), to give the notice provided for in this chapter, constitutes grounds for disciplinary action under the Contractors' State License Law.

§9350. The rights of all persons furnishing work pursuant to a public works contract, with respect to any fund for payment of construction costs, are governed exclusively by this chapter, and no person may assert any legal or equitable right with respect to that fund, other than a right created by direct written contract between the person and the person holding the fund, except pursuant to the provisions of this chapter.

§9352. (a) A stop payment notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1, and shall be signed and verified by the claimant. (b) The notice shall include a general description of work to be provided, and an estimate of the total amount in value of the work to be provided. (c) The amount claimed in the notice may include only the amount due the claimant for work provided through the date of the notice.

§9354. (a) Except as provided in subdivision (b), a stop payment notice shall be given in compliance with the requirements of Chapter 2 (commencing with Section 8100) of Title 1. (b) A stop payment notice shall be given to the public entity by giving the notice to the following person: (1) In the case of a public works contract of the state, the director of the department that awarded the contract. (2) In the case of a public works contract of a public entity other than the state, the office of the controller, auditor, or other public disbursing officer whose duty it is to make payment pursuant to the contract, or the commissioners, managers, trustees, officers, board of supervisors, board of trustees, common council, or other body by which the contract was awarded.

§9356. A stop payment notice is not effective unless given before the expiration of whichever of the following time periods is applicable: (a) If a notice of completion, acceptance, or cessation is recorded, 30 days after that recordation. (b) If a notice of completion, acceptance, or cessation is not recorded, 90 days after cessation or completion.

§9358. (a) The public entity shall, on receipt of a stop payment notice, withhold from the direct contractor sufficient funds due or to become due to the direct contractor to pay the claim stated in the stop payment notice and to provide for the public entity's reasonable cost of any litigation pursuant to the stop payment notice. (b) The public entity may satisfy its duty under this section by refusing to release funds held in escrow under Section 10263 or 22300 of the Public Contract Code.

§9360. (a) This chapter does not prohibit payment of funds to a direct contractor or a direct contractor's assignee if a stop payment notice is not received before the disbursing officer actually surrenders possession of the funds. (b) This chapter does not prohibit payment of any amount due to a direct contractor or a direct contractor's assignee in excess of the amount necessary to pay the total amount of all claims stated in stop payment notices received by the public entity at the time of payment plus any interest and court costs that might reasonably be anticipated in connection with the claims.

§9362. (a) Not later than 10 days after each of the following events, the public entity shall give notice to a claimant that has given a stop payment notice of the time within which an action to enforce payment of the claim stated in the stop payment notice must be commenced: (1) Completion of a public works contract, whether by acceptance or cessation. (2) Recordation of a notice of cessation or completion. (b) The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1. (c) A public entity need not give notice under this section unless the claimant has paid the public entity ten dollars (\$10) at the time of giving the stop payment notice.

§9364. (a) A public entity may, in its discretion, permit the direct contractor to give the public entity a release bond. The bond shall be executed by an admitted surety insurer, in an amount equal to 125 percent of the claim stated in the stop payment notice, conditioned for the payment of any amount the claimant recovers in an action on the claim, together with court costs if the claimant prevails. (b) On receipt of a release bond, the public entity shall not withhold funds from the direct contractor pursuant to the stop payment notice. (c) The surety on a release bond is jointly and severally liable to the claimant with the sureties on any payment bond given under Chapter 5 (commencing with Section 9550).

§9402. The direct contractor shall serve on the public entity an affidavit, together with a copy of the affidavit, in compliance with the requirements of Chapter 2 (commencing with Section 8100) of Title 1,

that includes all of the following information: (a) An allegation of the grounds for release of the funds and a statement of the facts supporting the allegation. (b) A demand for the release of all or the portion of the funds that are alleged to be withheld improperly or in an excessive amount. (c) A statement of the address of the contractor within the state for the purpose of permitting service by mail on the contractor of any notice or document.

§9404. The public entity shall serve on the claimant a copy of the direct contractor's affidavit, together with a notice stating that the public entity will release the funds withheld, or the portion of the funds demanded, unless the claimant serves on the public entity a counteraffidavit on or before the time stated in the notice. The time stated in the notice shall be not less than 10 days nor more than 20 days after service on the claimant of the copy of the affidavit. The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

§9406. (a) A claimant that contests the direct contractor's affidavit shall serve on the public entity a counteraffidavit alleging the details of the claim and describing the specific basis on which the claimant contests or rebuts the allegations of the contractor's affidavit. The counteraffidavit shall be served within the time stated in the public entity's notice, together with proof of service of a copy of the counteraffidavit on the direct contractor. The service of the counteraffidavit on the public entity and the copy of the affidavit on the direct contractor shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1. (b) If no counteraffidavit with proof of service is served on the public entity within the time stated in the public entity's notice, the public entity shall immediately release the funds, or the portion of the funds demanded by the affidavit, without further notice to the claimant, and the public entity is not liable in any manner for their release. (c) The public entity is not responsible for the validity of an affidavit or counteraffidavit under this article.

§9408. (a) If a counteraffidavit, together with proof of service, is served under Section 9406, either the direct contractor or the claimant may commence an action for a declaration of the rights of the parties. (b) After commencement of the action, either the direct contractor or the claimant may move the court for a determination of rights under the affidavit and counteraffidavit. The party making the motion shall give not less than five days' notice of the hearing to the public entity and to the other party. (c) The notice of hearing shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1. Notwithstanding Section 8116, when notice of the hearing is made by mail, the notice is complete on the fifth day following deposit of the notice in the mail. (d) The court shall hear the motion within 15 days after the date of the motion, unless the court continues the hearing for good cause.

§9410. (a) The affidavit and counteraffidavit shall be filed with the court by the public entity and shall constitute the pleadings, subject to the power of the court to permit an amendment in the interest of justice. The affidavit of the direct contractor shall be deemed controverted by the counteraffidavit of the claimant, and both shall be received in evidence. (b) At the hearing, the direct contractor has the burden of proof.

§9412. (a) No findings are required in a summary proceeding under this article. (b) If at the hearing no evidence other than the affidavit and counteraffidavit is offered, the court may, if satisfied that sufficient facts are shown, make a determination on the basis of the affidavit and counteraffidavit. If the court is not satisfied that sufficient facts are shown, the court shall order the hearing continued for production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits. (c) At the conclusion of the hearing, the court shall make an order determining whether the demand for release is allowed. The court's order is determinative of the right of the claimant to have funds further withheld by the public entity. (d) The direct contractor shall serve a copy of the court's order on the public entity in compliance with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

§9414. A determination in a summary proceeding under this article is not res judicata with respect to a right of action by the claimant against either the principal or surety on a payment bond or with respect to a right of action against a party personally liable to the claimant.

§9440. A direct contractor may obtain release of funds withheld pursuant to a stop payment notice under the summary proceeding provided in this article on any of the following grounds: (a) The claim on which

the notice is based is not a type for which a stop payment notice is authorized under this chapter. (b) The claimant is not a person authorized under Section 9100 to give a stop payment notice. (c) The amount of the claim stated in the stop payment notice is excessive. (d) There is no basis for the claim stated in the stop payment notice.

§9450. If funds withheld pursuant to a stop payment notice are insufficient to pay in full the claims of all persons who have given a stop payment notice, the funds shall be distributed among the claimants in the ratio that the claim of each bears to the aggregate of all claims for which a stop payment notice is given, without regard to the order in which the notices were given or enforcement actions were commenced.

§9452. Nothing in this chapter impairs the right of a claimant to recover from the direct contractor or the contractor's sureties in an action on a payment bond under Chapter 5 (commencing with Section 9550) any deficit that remains unpaid after the distribution under Section 9450.

§9454. A person that willfully gives a false stop payment notice to the public entity or that willfully includes in the notice work not provided for the public works contract for which the stop payment notice is given forfeits all right to participate in the distribution under Section 9450.

§9456. (a) A stop payment notice takes priority over an assignment by a direct contractor of any amount due or to become due pursuant to a public works contract, including contract changes, whether made before or after the giving of a stop payment notice, and the assignment has no effect on the rights of the claimant. (b) Any garnishment of an amount due or to become due pursuant to a public works contract by a creditor of a direct contractor under Article 8 (commencing with Section 708.710) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure and any statutory lien on that amount is subordinate to the rights of a claimant.

§9500. (a) A claimant may not enforce payment of the claim stated in a stop payment notice unless the claimant has complied with all of the following conditions: (1) The claimant has given preliminary notice to the extent required by Chapter 3 (commencing with Section 9300). (2) The claimant has given the stop payment notice within the time provided in Section 9356. (b) The claim filing procedures of Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code do not apply to an action under this article.

§9502. (a) The claimant shall commence an action against the public entity and the direct contractor to enforce payment of the claim stated in a stop payment notice at any time after 10 days from the date the claimant gives the stop payment notice. (b) The claimant shall commence an action against the public entity and the direct contractor to enforce payment of the claim stated in a stop payment notice not later than 90 days after expiration of the time within which a stop payment notice must be given. (c) An action under this section may not be brought to trial or judgment entered before expiration of the time provided in subdivision (b). (d) If a claimant does not commence an action to enforce payment of the claim stated in a stop payment notice within the time provided in subdivision (b), the notice ceases to be effective and the public entity shall release funds withheld pursuant to the notice.

§9504. Within five days after commencement of an action to enforce payment of the claim stated in a stop payment notice, the claimant shall give notice of commencement of the action to the public entity in the same manner that a stop payment notice is given.

§9506. If more than one claimant has given a stop payment notice: (a) Any number of claimants may join in the same enforcement action. (b) If claimants commence separate actions, the court that first acquires jurisdiction may order the actions consolidated. (c) On request of the public entity, the court shall require that all claimants be impleaded in one action and shall adjudicate the rights of all parties in the action.

§9508. Notwithstanding Section 583.420 of the Code of Civil Procedure, if an action to enforce payment of the claim stated in a stop payment notice is not brought to trial within two years after commencement of the action, the court may in its discretion dismiss the action for want of prosecution.

§9510. A stop payment notice ceases to be effective, and the public entity shall release funds withheld, in either of the following circumstances: (a) An action to enforce payment of the claim stated in the stop payment notice is dismissed, unless expressly stated to be without prejudice. (b) Judgment in an action to enforce payment of the claim stated in the stop payment notice is against the claimant.

§9550. (a) A direct contractor that is awarded a public works contract involving an expenditure in excess of twenty-five thousand dollars (\$25,000) shall, before commencement of work, give a payment bond to and approved by the officer or public entity by whom the contract was awarded. (b) A public entity shall state in its call for bids that a payment bond is required for a public works contract involving an expenditure in excess of twenty-five thousand dollars (\$25,000). (c) A payment bond given and approved under this section will permit performance of and provide coverage for work pursuant to a public works contract that supplements the contract for which the bond is given, if the requirement of a new bond is waived by the public entity. (d) For the purpose of this section, a design professional is not deemed a direct contractor and is not required to give a payment bond. (e) This section does not apply to a public works contract with a "state entity" as defined in subdivision (d) of Section 7103 of the Public Contract Code.

§9552. If a payment bond is not given and approved as required by Section 9550: (a) Neither the public entity awarding the public works contract nor any officer of the public entity shall audit, allow, or pay a claim of the direct contractor pursuant to the contract. (b) A claimant shall receive payment of a claim pursuant to a stop payment notice in the manner provided by Chapter 4 (commencing with Section 9350).

§9554. (a) A payment bond shall be in an amount not less than 100 percent of the total amount payable pursuant to the public works contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. (b) The payment bond shall provide that if the direct contractor or a subcontractor fails to pay any of the following, the surety will pay the obligation and, if an action is brought to enforce the liability on the bond, a reasonable attorney's fee, to be fixed by the court: (1) A person authorized under Section 9100 to assert a claim against a payment bond. (2) Amounts due under the Unemployment Insurance Code with respect to work or labor performed pursuant to the public works contract. (3) Amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and subcontractors under Section 13020 of the Unemployment Insurance Code with respect to the work and labor. (c) The payment bond shall be conditioned for the payment in full of the claims of all claimants and by its terms inure to the benefit of any person authorized under Section 9100 to assert a claim against a payment bond so as to give a right of action to that person or that person's assigns in an action to enforce the liability on the bond. (d) The direct contractor may require that a subcontractor give a bond to indemnify the direct contractor for any loss sustained by the direct contractor because of any default of the subcontractor under this section.

§9558. A claimant may commence an action to enforce the liability on the bond at any time after the claimant ceases to provide work, but not later than six months after the period in which a stop payment notice may be given under Section 9356.

§9560 (a) In order to enforce a claim against a payment bond, a claimant shall give the preliminary notice provided in Chapter 3 (commencing with Section 9300). (b) If preliminary notice was not given as provided in Chapter 3 (commencing with Section 9300), a claimant may enforce a claim 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 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. (c) Commencing July 1, 2012, and except as provided in subdivision (b), if the preliminary notice was required to be given by a person who has no direct contractual relationship with the contractor, and who has not given notice as provided in Chapter 3 (commencing with Section 9300), that person may enforce a claim by giving written notice to the surety and the bond principal, as provided in Section 9562, within 15 days after recordation of a notice of completion. If no notice of completion has been 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.

(d) Subdivision (c) shall not apply in either of the following circumstances:(1) All progress payments, except for those disputed in good faith, have been made to a subcontractor who has a direct contractual relationship with the general contractor to whom the claimant has provided materials or services. (2) The subcontractor who has a direct contractual relationship with the general contractor to whom the claimant has provided materials or services has been terminated from the project pursuant to the contract, and all progress payments, except those disputed in good faith, have been made as of the termination date.

(e) Pursuant to Section 9300, this section shall not apply to a laborer, as defined under Section 8024.

(f) This section shall become operative on July 1, 2012.

§9564. (a) A claimant may maintain an action to enforce the liability of a surety on a payment bond whether or not the claimant has given the public entity a stop payment notice. (b) A claimant may maintain an action to enforce the liability on the bond separately from and without commencement of an action against the public entity by whom the contract was awarded or against any officer of the public entity. (c) In an action to enforce the liability on the bond, the court shall award the prevailing party a reasonable attorney's fee.

§9562. Notice to the principal and surety under Section 9560 shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

§9566. (a) A claimant does not have a right to recover on a payment bond unless the claimant provided work to the direct contractor either directly or through one or more subcontractors pursuant to a public works contract. (b) Nothing in this section affects the stop payment notice rights of, and relative priorities among, design professionals.



**Fundamentals of Construction Contracts in California:**

*Understanding the Issues*

Santa Ana, CA      February 7, 2014

**MATRIX WITH COMPARISON OF  
OLD LAWS V. REVISED  
STATUTES**



*Business Law for the Business Person*

**MATRIX OF STATUTE MODIFICATIONS TO MECHANIC’S LIEN, STOP  
PAYMENT NOTICE, PAYMENT BOND, AND PROMPT PAY PROVISIONS  
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<b>Former §</b>	<b>New § or §§</b>	<b>Subject</b>
3081.1	8014, 8300	Definition of “design professional”
3081.2	8302	Design professional lien
3081.3	8304	Design professional lien—requirements
3081.4	8306	Design professional lien—creation, expiration, satisfaction
3081.5	8308	Design professional lien—enforcement
3081.6	8310	Design professional lien—effect on mechanics lien
3081.7	8312	Design professional lien—recordation
3081.8	8314	Design professional lien—effect on other remedies
3081.9	8316	Design professional lien—priority
3081.10	8318	Design professional lien—not available for single-family home
3082	8000	Application of definitions
3083	8506, 8532	Stop payment notice
3084	8416	Claim of mechanics lien
3085	8004	Definition of “claimant”
3086 (except (b))	8180, 9200	Definition of “ completion of work of improvement”
3086(b) for private works	Eliminated	Definition of “completion”; acceptance by owner not applicable to private work

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<b>Former §</b>	<b>New § or §§</b>	<b>Subject</b>
3087	8006	Definition of “construction lender”
3088	8008, 8016	Definition of “contract”, “direct contract”
3089	8024	Definition of “laborer”
3090	8028	Definition of “material supplier”
3092	818, 9202	Notice of cessation
3093	8182, 8184, 9204, 9208	Notice of completion
3094	8444	Notice of nonresponsibility
3095	8018	Definition of “direct contractor”
3096	8606, 9554	Payment bond
3097	8034, 8200	Preliminary notice for private work
3097(a)	8200	Preliminary notice for private work
3097(b)	8200	Preliminary notice for private work
3097(c)	8102, 8202, 8204	Preliminary notice for private work— required contents
3097(d)	8204	Preliminary notice for private work— time requirements
3097(e)	8212	Preliminary notice for private work— no waiver
3097(f)	8116	Methods of giving notice
3097(g)	8206	Preliminary notice for private work— number of notices required

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<b>Former §</b>	<b>New § or §§</b>	<b>Subject</b>
3097(h)	8216	Preliminary notice for private work— failure of subcontractor to give notice
3097(i)	8172	Identifying construction lender on building permit application
3097(j)	8174	Information requiring on construction trust deed
3097(k)	8104	Failure to pay laborers— notice required
3097(l)	8170, 8208	Information in contract; information to be provided by direct contractor for preliminary notice
3097(m)	8170, 8208	Information in contract; information to be provided by direct contractor for preliminary notice
3097(n)	8210	Preliminary notice for private work— name and address of construction lender
3097(o)	8214	Preliminary notice for private work— recordation
3097(p)	Eliminated	Preliminary notice for private work— effect of earlier enactments
3097.1	8118	Proof of notice declaration
3098	8034, 9300	Preliminary notice for public work
3098(a)	9300, 9302, 9303, 9304	Preliminary notice for public work— required recipients, contents, method of giving, timing
3098(b)	9306	Preliminary notice for public work— failure of sub-contractor to give notice
3098(c)	9300	Preliminary notice for public work— who is not required to give
3098(d)	9304	Preliminary notice for public work— timing

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<b>Former §</b>	<b>New § or §§</b>	<b>Subject</b>
3098(e)	Eliminated	Preliminary notice for public work – effect of earlier enactment
3099	8036	Definition of “public entity”
3100	8038	Definition of “public works contract”
3101	8040	Definition of “site”
3102	8042	Definition of “site improvement”
3103	8044, 8502, 8506, 9352, 9354	Stop payment notice
3104	8046	Definition of “subcontractor”
3105	Eliminated	Definition of “subdivision”
3106	8050	Definition of “work of improvement”
3109	8160	Application of mechanics lien provisions to private works
3110	8400, 8404, 8430	Mechanics lien— entitlement to lien; amount
3110.1(a)(1)	8700	Security for large project—applicability
3110.5(a)(2)	8700	Security for large project— applicability
3110.5(b)	8710, 8720	Security for large project— owner’s obligations: means of providing
3110.5(b)(1)	8722	Security for large project— bond
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3110.5(b)(3)	8726, 8728	Security for large project— escrow account
3110.5(c)	8712, 8730	Security for large project— noncompliance; amount if contract price not fixed

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3110.5(d)	8716	Security for large project— effect on other statutes
<b>Former §</b>	<b>New § or §§</b>	<b>Subject</b>
3110.5(e)	8702	Security for large project—not applicable to single family homes
3110.5(f)	8704	Security for large project— Not applicable to specified owners
3110.5(g)	8714	Security for large project—no waiver
3111	8024, 9100	Person or entity with standing to enforce laborer's rights to compensation
3112	8402, 8404, 8440	Mechanics lien for site improvement
3114	8410	Mechanics lien— preliminary notice requirements
3115	8412	Mechanics lien— timing requirements for direct contractor
3116	8414	Mechanics lien— timing requirements for other claimants
3117	8186	Private works of improvement under multiple contracts— timing requirements
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3123(a)	8430	Mechanics lien— amount
3123(b)	8430	Mechanics lien— amount
3123(c)	Eliminated	Mechanics lien— notice of requirements for contract changes
3124	8432	Mechanics lien— not extended to work outside contract
3128	8440, 8442	Mechanics lien— attaches to real property; interests subject to lien

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3129	8442	Mechanics lien— interests subject to lien
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3130	8446	Mechanics lien on two or more works of improvement
3131(1 <sup>st</sup> ¶)	8448	Mechanics lien— separate residential unit
3131(2 <sup>nd</sup> ¶)	Eliminated	Mechanics lien— multiple condominium units
3134	8450	Mechanics lien— priority
3135	8454	Mechanics lien— site improvement
3136	8456	Mechanics lien— priority of optional advance of loan funds
3137	8458	Mechanics lien— priority of lien for site improvement
3138	8452	Mechanics lien— priority of mortgage or deed of trust
3139	8458	Mechanics lien— priority of lien for site improvement
3140	8434	Mechanics lien— amount enforceable by direct contractor or subcontractor
3143	8424	Mechanics lien— release bond
3144	8460	Mechanics lien— time limit for enforceable action
3144.5	8424	Mechanics lien— notice of lien release bond
3145	8460	Mechanics lien— time limit to commence enforcement action

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3146	8461	Mechanics lien— recordation of notice of pendency of action
3147	8462	Mechanics lien— dismissal of action after 2 years for want of prosecution
3148	8490	Mechanics lien— effect of dismissal
<b>Former §</b>	<b>New § or §§</b>	<b>Subject</b>
3149	Eliminated	Mechanics lien— joinder of claimants in single foreclosure action, coordination, or consolidation; now see CC §8065, incorporating similar procedures in CCP §§378, 403-404, 1048
3150	8464	Mechanics lien— costs in action of enforce
3151	8466	Mechanics lien— deficiency judgment
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3153	8470	Mechanics lien— enforcement action for work provided to contractor
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3154(b)	8484, 8488	Mechanics lien— allegations in petition for release order
3154(c)	8486	Mechanics lien— hearing on petition for release order
3154(d)	8486	Mechanics lien— service of copy of petition and notice of hearing on petition for release order
3154(e)	8486, 8488	Mechanics lien— hearing on petition for release order: service
3154(f)	8488, 8490	Mechanics lien— order release claims of lien
3154(g)	8488	Mechanics lien— release order attorney fees
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3154(i)	8480	Mechanics lien— judicial arbitration not applicable to release order proceedings
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3159	8508, 8350	Private work— stop payment notice to construction lender
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3159(b)	8542	Private work— stop payment notice to construction lender— amount of recovery
3159(c)	8542	Private work— stop payment notice to construction lender— limit on amount required to be withheld
3160	8508	Private work— stop payment notice— requirements for validity
3161	8522	Private work— stop payment notice to owner— owner's obligation
3162(a)	8536, 8538	Private work— stop payment notice to construction lender— lender's obligation
3162(b)	8542	Private work— stop payment notice to construction lender— amount of recovery
3162(c)	8542	Private work— stop payment notice to construction lender— limit of amount required to be withheld

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3183	9500	Public work—stop payment notice—requirements for enforcement
3184	9356	Public work—stop payment notice-time requirements
3185	9362	Public work—stop payment notice—notice by public entity of time to file enforcement action
<b>Former §</b>	<b>New § or §§</b>	<b>Subject</b>
3186	9358	Public work—stop payment notice—public entity's duty to withhold funds
3187	9360	Public work—stop payment notice—payment of funds before stop payment notice received or in excess of amount to pay claim
3190	9450	Public work—stop payment notice-distribution of funds
3191	9452	Public work—stop payment notice—right to recover deficit
3192	9454	Public work—stop payment notice-false notice forfeits right to funds
3193	9456	Public work—stop payment notice—priority over assignment of amount due under contract
3196	9364	Public work—stop payment notice—release bond

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3197	9400	Public work—stop payment notice—grounds for release of funds
3198	9402	Public work—stop payment—direct contractor's service of affidavit on public entity for release of funds
3199	9404	Public work—stop payment notice—public entity's service of copy of direct contractor's affidavit and notice on claimant
<b>Former §</b>	<b>New § or §§</b>	<b>Subject</b>
3200	9406	Public work—stop payment notice—claimant's counteraffidavit
3201	9408	Public work—stop payment notice—action for declaration of rights
3202	9410	Public work—stop payment notice—affidavit and counteraffidavit filed with court
3202	9412	Public work—stop payment notice—procedure in summary proceeding for release of funds
3204	Eliminated	Right to jury trial; waiver of same
3205	9414	Public work—stop payment notice—determination in summary proceeding for release of funds not res judicata
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3211	9204	Public work—stop payment notice—notice of commencement of action to enforce
3212	9508	Public work—stop payment notice—dismissal of action after 2 years for want of prosecution
3213	9510	Public work—stop payment notice—ceases to be effective on dismissal or judgment
<b>Former §</b>	<b>New § or §§</b>	<b>Subject</b>
3214	9506	Public work—stop payment notice—joinder of claimants
3225	8152	Bond surety not released from liability
3226	8154	Bonds—construction; no release for breach of contract; conditions of recovery
3227	8614, 9562	Payment bonds—notice to principal and surety
3235	8600	Private work payment bond—restriction of lien enforcement
3236	8600, 8602	Private work payment bond—owner may require security
3237	8604	Private work payment bond—bond required by lending institution
3239	8609	Private work payment bond—shortening period for commencement of action

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3240	8610	Private work payment bond—time for commencing action to enforce
3242	8612	Private Work payment bond—notice requirement for enforcement of claim
3247	9550	Public Work payment bond—required for contracts in excess of \$25,000.00
3248	9554	Public work payment bond—requirements
<b>Former §</b>	<b>New § or §§</b>	<b>Subject</b>
3249	9558	Public work payment bond—time for commencing action to enforce
3250	9564	Public work payment bond—maintaining action to enforce; attorneys fees to prevailing party
3251	9552	Public work payment bond—effect of not giving bond
3252	9560	Public work payment bond—preliminary or other notice
3258	8060	Filing/recording papers with county recorder
3259	8056	Works of improvement proceedings—rules of practice
3259.5	8190	Private work—owner's notice of recording notice of completion or cessation

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3260(a)	Eliminated	Applicability of §3260; effect of amendments
3260(b)	8810	Private work—retention payments
3260(c)	8812	Private work—retention withheld/paid by owner
3260(c)(1)	Eliminated	Meaning of “Date of completion” for purposes of §3260
3260(c)(2)	Eliminated	Meaning of “Date of completion” for purposes of §3260
<b>Former §</b>	<b>New § or §§</b>	<b>Subject</b>
3260(d)	8814	Private work—retention withheld/paid by direct contractor
3260(e)	8814	Private work—retention withheld/paid by direct contractor—dispute
3260(f)	8816	Private work—retention payments—completion of disputed work
3260(g)	8818	Private work—retention payments—penalty for failure to make timely payment
3260(h)	8820	Private work—retention payments—no waiver
3260(i)	8822	Private work—retention payments—not applicable to lender

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3260.1	8800	Private work—progress payments
3260.2(a)	8830, 8832, 8834, 8836, 8840	Private work—stop work notice
3260.2(b)	8842	Private work—right to stop work is in addition to other rights
3260.2(c)	8838	Private work—stop notice—liability for stopping work
3260.2(d)	8844	Private work—stop work notice—expedited proceeding to determining liability for amount due
<b>Former §</b>	<b>New § or §§</b>	<b>Subject</b>
3260.2(e)	8846	Private work—stop notice—no waiver
3260.2(f)	8848	Private work—stop work notice— applicability
3260.2(g)	Eliminated	Private work—stop work notice—service
3261	8422	Mechanics Lien—erroneous information in claim
3262(a)	8122, 8124	Work of improvement—waiver and release
3262(b)(1)	8126	Work of improvement—waiver and release— validity of oral or written statement



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3262(b)(2)	8128	Work of improvement—reduction or release of stop payment notice
3262 (c)	8130	Enforceability of accord and satisfaction or settlement
3262(d)(1)	8132	Required form of conditional waiver and release in exchange for progress payment
3262(d)(2)	8134	Required from of unconditional waiver and release in exchange for progress payment
3262(d)(3)	8136	Required form of conditional waiver and release in exchange for final payment
<b>Former §</b>	<b>New § or §§</b>	<b>Subject</b>
3262(d)(4)	8138	Required form of unconditional waiver and release in exchange for final payment
3262.5	8802	Contract between public utility and direct contractor—progress payments
3263	8062	Owner's act not construed to prevent direct contractor's performance or to exonerate surety
3264	8500, 9350	Rights in construction funds governed exclusively by stop notice payment notice provisions

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3265	9500	Claim filing procedures of CCP §§900-935.9 not applicable to enforcement of public work stop payment notice claim
3266	8054	Specified inapplicability of works of improvement provision
3267	8608, 9566	Entitled to recover on direct contractor's payment bond only if claimant provided work