

Revised law is new paint job for construction remedies

By William 'Fritz' Pahland

If the sudden 2008 credit crunch can be likened to an earthquake, then the following flood of mechanics lien and stop payment notice litigation was its aftershock. Developers finding themselves insolvent and in loan default could not pay their contractors. Unable to collect from developers, contractors turned to filing mechanics lien and stop payment notice lawsuits.

Just when attorneys and judges were growing familiar with the statutes governing mechanics liens and stop payment notices (commonly called the Mechanics Lien Law), the Legislature changed the ground rules. In 2007, the Law Revision Commission issued a report detailing proposed changes to the Mechanics Lien Law. In 2010, the Legislature passed SB 189 adopting many of the Commission's proposed changes. The revised Mechanics Lien Law went into effect on July 1, 2012, forcing practitioners and courts to adapt to a whole new set of statutes. Fortunately, statutory revisions do not appear to have caused the accumulated knowledge gained from constant mechanics lien litigation over the past four years to have gone to waste. Instead of changing

the substance of the existing Mechanics Lien Law, the 2012 revisions amount to more of a gentle statutory reorganization. The statutes were relocated from their prior home in sections 3082 to 3267 of the Civil Code and placed in new sections 8000 through 8848 and 9000 to 9566. The revisions also reorganized the statutory grouping and modernized some of the archaic language found in the former statutes.

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With a few minor exceptions, the changes implemented in the revised Mechanics Lien Law do not appear to have altered existing well-established legal principles governing the Mechanics Lien Law. Indeed, new section 8052(c) states that so long as a new statute is "substantially the same" as the corresponding old statute, the new statute is to be considered "a restatement and continua-

tion" of the old statute and not a "new enactment." Although time will tell, the vast majority of the new statutes appear to be substantially similar to their corresponding old statutes and therefore practitioners familiar with the former statute should not be in for much of a surprise when dealing with the revised statutes for the first time.

In short, the revised Mechanics Lien Law resembles a trusted old car with a new paint job: it still runs the same, only it now looks better.

Effective Date of the New Statutes
While the new statutes went into effect on July 1, 2012, the old ones did not automatically pass into irrelevance. Pursuant to section 8052, actions taken and notices given, prior to July 1, 2012 are governed by the old statutes. The new statutes govern actions taken and notices given after July 1, 2012. Parties involved in projects started before July 1, 2012 and finished after could find themselves in a strange hybrid situation where the case is governed by both the old and new statutes. Therefore, at least in the near future it will be important for practitioners to be conversant with both the old and the new statutes.

Organizational Revisions To The Mechanics Lien Law

The Mechanics Lien Law formerly consisted of seven Chapters. The statutory revisions divided the statutes into three major sections: (1) Works of Improvement Generally; (2) Private Works of Improvement; and (3) Public Work of Improvement. Each major section contains a number of subsections. This reorganization has resulted in a more reader-friendly format. Further, the revisions mostly did away with the long code provisions consisting of numerous subdivisions that were common in the former statutes.

Also, the revisions ended the practice of including substantive provisions in the definitions section.

Overall the revisions have streamlined the Mechanics Lien Law, allowing the reader to much more quickly and easily pinpoint the precise provision he or she is interested in.

Substantive Revisions to the Mechanics Lien Law

Even though the revisions mostly left the substantive provisions of the Mechanics Lien Law unchanged, there were a number of notable changes. A complete listing of every change is beyond the scope of this article and when dealing with the new statutes it will be important to carefully compare the relevant new code provisions to the old. Here are a few of the more noteworthy changes.

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- **New Notice Provision:** The revisions unify the rules associated with preparing and serving the various types of notices. The new statutes include a chapter governing form and content of the various notices required in the Mechanics Lien Law.

- **Owner Acceptance No Longer Constitutes "Completion":** New section 8180 deleted owner's acceptance as a measure of project completion.

- **Revised Time for Recording Notice of Completion:** New section 8182 increased the period in which an owner must record a Notice of Completion from 10 to 15 days after project completion.

- **Changed Penalty for Failure to Mail Notice of Completion:** Section 8190 changed the sanction for failing to give certain parties a copy of a Notice of Completion within 10 days of actual completion. Formerly, a claimant who did not receive notice had until 90 days after the Notice of Completion was recorded to record a mechanics lien. Now, such a claimant has until 90 days after completion of the work of improvement to record a mechanics lien.

- **Change in Amount of Mechanics Lien Release Bond:** New section 8424 reduces the amount of mechanics lien release bonds from 150 percent of the lien amount to 125 percent.

- **Changes to Procedure for Release of Lien:** New sections 8480 through 8488 added a number of procedural requirements to filing a petition to release an expired lien. For instance: (1) new section 8482 requires the petitioner to give at least 10 days written notice before filing a petition for release of lien; (2) new section 8484 requires that a lien release petition include a certified copy of the lien; and (3) new section 8480(c) permits filing a lien release petition even though the claimant has commenced an action.

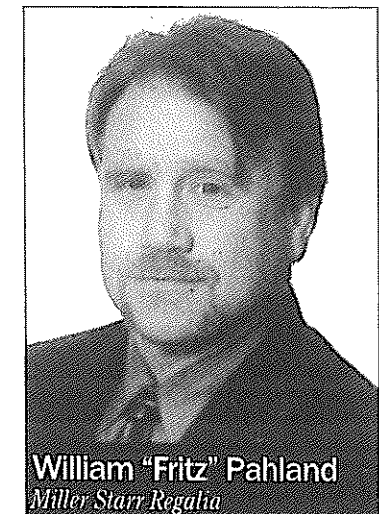
- **Clarification of Amount Construction Lender Must Withhold:** Former section 3162(a) provided that construction lender must withhold sufficient money in response to a Stop Payment Notice to "answer the claim [of the Stop Payment Notice] and any claim of lien that may be recorded." New sections 8536, removed the "any claim of lien"

language thereby clarifying that construction lenders must withhold only amounts necessary to answer Stop Payment Notice claims and not claims set forth in associated mechanics lien.

Conclusion

In sum, the Mechanics Lien Law is now better organized. Archaic language has been removed and the statutes streamlined. All practitioners should benefit from the more logical organization of the statutes as well as the easier-to-read language.

William 'Fritz' Pahland is a shareholder in the firm of Miller Starr Regalia and is also a licensed professional engineer. His practice focuses on construction, development and real estate secured lending issues. He is the primary author of the recently rewritten Chapter 28, Mechanics Liens, Stop Payment Notices, and Surety Bonds, Miller & Starr, California Real Estate 3d.



William "Fritz" Pahland
Miller Starr Regalia

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