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Trivial Imperfections: The California Mechanics' Lien Recording Statutes

Craig Penner Bronstein

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I. INTRODUCTION

"Mexican law," Walker thought to himself as he saddled his horse, "was much simpler. If you furnish lumber to a man to build his house and he doesn't pay you, you shoot him. If he sells the house and the new owner refuses to pay you, you shoot the new owner." Nonetheless, Walker had to admit that this new law seemed logical. It made sense that a person should get some kind of lien on a property that was built or improved using his materials or sweat. Just that year, the California Legislature had said so in An Act to Provide for the Lien of Mechanics and Others. This didn't help Walker though, because his lawyer didn't tell him that to enforce a lien, he first had to file it with the county re-

1. This remark is attributed to former Pennsylvania Supreme Court Justice Curtis Bok discussing "the unnecessary pother raised by blue-noses about sex in literature." Love in Fine Paragraphs, TIME, Oct. 19, 1962, at W6 (reviewing CURTIS BOK, MARIA (1962)).

2. This hypothetical scenario is based on the mid-nineteenth century case of Walker v. Hauss-Hijo, 1 Cal. 183 (1850), which was one of the first cases heard by the California Supreme Court addressing the recording of mechanics' lien claims. Violence did occasionally ensue from property liens in frontier California. On July 4, 1865, Los Angeles County Under-sheriff Andrew Jackson King personally served a writ of attachment on wealthy Chino rancher Robert S. Carlisle. Carlisle threw King off his ranch and the following evening, at a wedding reception attended by both men, Carlisle slashed King in the hand and side with a bowie knife. At high noon the following day, King's brothers, Frank and Houston, seeking revenge, exchanged shots with Carlisle on Main Street in Los Angeles. The gunfight, one of the most infamous in Los Angeles history, left both Frank King and Carlisle dead. Cecilia Rasmussen, L.A. Scene: The City Then and Now, L.A. TIMES, Aug. 2, 1993, at B3.

3. Ch. 87, 1850 Cal. Stat. 211.
corder. Nonetheless, because the county judge, like Walker’s lawyer, didn’t seem to know about the recording requirement, Walker got his lien even though Hauss-Hijo had sold the building out from under him.4

But now, here he was on his way to San Francisco to appear before the California Supreme Court, which had been formed just eight months earlier in March 1850.5 Unfortunately for Walker, the court, citing section seven of the recently enacted mechanics’ lien law,6 reversed the San Joaquin judge and held that because Walker had failed to record his claim of lien with the county recorder “within 60 days of completion of the building,” Walker was not entitled to the lien.7

Such was the beginning of what is now almost 150 years of confusion and misinterpretation of the California mechanics’ lien recording statutes. The mechanics’ lien statutes were enacted to protect the interests of those who have provided labor or materials toward the improvement of the property of others.8 Yet, because of certain ambiguities surrounding their interpretation, the statutes are now often a source of unfairness to those they were designed to protect.9

Today, the typical mechanics’ lien claim is more likely to involve the big-city high rise or multiple-unit housing project than the rural gold rush era shack of Walker.10 The typical modern commercial construction project may involve any number of contractors, subcontractors, sub-subcontractors, and material suppliers.11 The claims and liens of these

4. Walker, 1 Cal. at 184.
5. See 1 Cal. v, viii (1850) (Preface).
7. Walker, 1 Cal. at 185-86.
8. See infra notes 44-46 and accompanying text.
9. See infra part III. As recently as the late 1950s, the California State Bar concluded that “[f]ew property owners, and almost no home owners, are aware that workmen and materialmen with whom they have had no contractual relations, can get a lien on their property . . . .” State Bar of Cal., Conference of State Bar Delegates, Resolution No. 70 (1958) (resolution appointing committee to study California law in regard to mechanics’ liens) (on file with Loyola of Los Angeles Law Review).
11. See 8 HARRY D. MILLER & MARVIN B. STARR, CURRENT LAW OF CALIFORNIA REAL ESTATE §§ 26:6-11 (1990). A subcontractor is a contractor who contracts with the original or general contractor, see infra note 64 and accompanying text, to provide labor or materials for a portion of the work due under the contractor’s contract with the owner. Id. § 26:8. A sub-subcontractor is a subcontractor who contracts with another subcontractor. Id. A supplier of materials, commonly known as a “materialman,” is defined as “any person who furnishes materials or supplies to be used or consumed in any work of improvement.” Id. § 26:9. Skilled and unskilled laborers employed by owners, contractors, and subcontractors—but not those employed by material suppliers—are entitled to enforce mechanics’ liens for
parties will be opposed not only by the owner of the property, but also by the developer, lender, and title insurer. As a result, mechanics' lien disputes are increasingly protracted and expensive.

While the context in which the law is applied has changed enormously in the past 150 years, the statutory definition has, in many respects, changed very little. When Walker was decided it was certainly a less complicated task to gauge when "completion of the building" had occurred. Yet today, the statutory language that defines the starting point for the running of the period of limitations on the recording of a mechanics' lien claim is no more explicitly defined than it was in 1850.

Between 1850 and 1971, when the present recording statutes were enacted, there were numerous amendments to the recording statutes. With so much statutory history and judicial interpretation to work with, the intent of the framers of the original and subsequent statutes has been clouded and is now the subject of much confusion and debate. Thus, it is often a mystery—both prospectively to the claimant with a pending claim, and retrospectively to the courts—when a mechanics' lien claim must be recorded to be valid.

This Comment attempts to solve the mystery surrounding the current mechanics' lien recording statutes by providing a detailed analysis of their historical development and modern interpretation. Part II provides historical background into the mechanics' lien in general and the mechanics' lien recording statutes in particular. Part III analyzes the current recording statutes and the uncertainty surrounding their interpretation. Finally, part IV briefly summarizes the major flaws in the recording statutes and then proposes specific statutory revisions to cure the ambiguity and uncertainty surrounding the statutes.

wages due. Id. § 26:10. Architects, registered engineers, and licensed land surveyors can also claim under the mechanics' lien statutes. Id. § 26:11.


15. The present statutes require that a claim of lien be recorded within "90 days after the completion of the work of improvement." CAL. CIV. CODE §§ 3115(a), 3116(a) (West 1993). This 90-day limitation is applicable in cases where the owner has failed to record either a notice of completion or a notice of cessation. See id. §§ 3115(b), 3116(b) (West 1993). For a discussion of the significance of the notice of completion and notice of cessation to this analysis, see infra notes 68-71 and accompanying text.

16. See infra note 61 for a chronology of the session laws of these amendments.

17. Part IV is also designed to give the reader a brief summary of the detailed statutory analysis contained in part III.
II. BACKGROUND

A. Source and Scope of the Problem

The question of when a construction project is complete for purposes of beginning the period of limitations on the recording of mechanics' lien claims has confounded California courts, lawyers, and laypersons for almost 150 years. The effects of this confusion are far-reaching. Construction is stalled while lawyers engage in unnecessary bickering over the language of a 150-year-old statute and argue the merits of appellate opinions that have generally misconstrued the statute or been misconstrued themselves.19

The large number of reported appellate-level mechanics' lien cases,20 specifically those dealing with the recording statutes,21 are themselves proof of the extent of the problem. Some of these decisions do more to exacerbate the ambiguity of the statutes than they do to resolve it. This ambiguity can lead to unusual arguments at the trial court level and encourage claimants to make contradictory, but equally well-supported, arguments. For instance, a claimant may attempt to take advantage of the ambiguity in the law and the confusion of the courts by simultaneously arguing that a project was completed at an early date to avoid liability to the owner for late completion, and at a later date for purposes of extending the time for recording a mechanics' lien.22

18. The purpose of the mechanics' lien recording statutes is to limit the period of time claimants have to record their claims of lien. See CAL. CIV. CODE §§ 3115, 3116 (West 1993). Nonetheless, since the recording statutes "set[ ] forth a condition precedent to perfection of the lien itself" rather than "provide for the enforcement of a pre-existing lien right," they are not "statutes of limitation" in the technical sense of the word. Robinson v. S & S Dev., 256 Cal. App. 2d 13, 17-18, 63 Cal. Rptr. 663, 666 (1967); see also Sanguinetti & Arnaiz Dev. Co. v. A. Teichert & Sons, Inc., 230 Cal. Rptr. 7, 12-13 (1986) (holding that dismissal of action for failure to record claim of lien is termination on merits and not dismissal for failure to comply with statute of limitations) (reh'g denied and opinion ordered depublished Dec. 11, 1986). Based on these distinctions, Civil Code § 3144, which requires a mechanics' lien claimant to file suit to foreclose a lien within 90 days of recording the lien, is a statute of limitation. See Robinson, 256 Cal. App. 2d at 17, 63 Cal. Rptr. at 666; Sanguinetti & Arnaiz Dev. Co., 230 Cal. Rptr. at 12-13. See infra notes 41-43 and accompanying text for a discussion of mechanics' lien foreclosure and Civil Code § 3144.

19. See infra part III.


21. See infra part III.C.

22. See, e.g., Superior Court of the State of Cal. for the County of Orange, Defendant's Brief at 3, 23, Waterfront Constr. #1 v. J.A. Jones Constr. Co., No. 657682 (July 1, 1992); see also Marble Lime Co. v. Lordsburg Hotel Co., 96 Cal. 332, 333-34, 31 P. 164, 164-65 (1892) (holding in one part of opinion that hotel was completed on August 2, 1889, and in another part that hotel was never actually completed).
While the courts themselves must bear fair responsibility for some of the problem, misinterpretation and misapplication by practitioners and commentators of otherwise well-reasoned decisions have led to much of the confusion.\textsuperscript{23} The fact that appellate courts have, in recent years, issued few major on-point decisions is as likely the result of a resignation to the irreconcilability of the opposing views of the issue as it is representative of a well-settled body of law.\textsuperscript{24}

One commentator has suggested another reason for the lack of decisions on the completion issue:

The relative lack of litigation concerning what is actual completion, and the consequent dearth of authority, probably stems from the fact that when an improvement is substantially complete, the owner takes possession and files a notice of completion, even though some minor corrective work is required, and lien claimants, who watch for such notices, are diligent in filing their claim within the statutory period following the filing of such notice.\textsuperscript{25} This analysis ignores the fact that a notice of completion is itself invalid if filed before completion.\textsuperscript{26} It is also questionable whether the ideal process described here is representative of the real world of mechanics' lien recording. If it were, there would surely be less litigation of the issue.\textsuperscript{27}

This is not to say that scholars and practitioners have ignored the subtleties of mechanics' lien law. In addition to the voluminous case law on the subject,\textsuperscript{28} mechanics' liens and mechanics' lien enforcement have been the subject of treatises,\textsuperscript{29} law review articles,\textsuperscript{30} and practitioners' guides\textsuperscript{31} since at least the beginning of this century. Nevertheless, the

\textsuperscript{23} See, for example, the discussion of Lewis v. Hopper, 140 Cal. App. 2d 365, 295 P.2d 93 (1956), \textit{infra} part III.C.3.a.

\textsuperscript{24} The most recent opinions relied on by practitioners and commentators were decided in the mid-1950s. See, e.g., Lewis, 140 Cal. App. 2d 365, 295 P.2d 93; Munger & Munger v. McBratney, 131 Cal. App. 2d Supp. 866, 280 P.2d 232 (1955).

\textsuperscript{25} MELVIN B. OGDEN, CALIFORNIA REAL PROPERTY LAW § 16.23, at 610-11 (1956).

\textsuperscript{26} CAL. CIV. CODE § 3093 (West 1993); \textit{see infra} note 68 and accompanying text.

\textsuperscript{27} \textit{See supra} note 20 and accompanying text.

\textsuperscript{28} \textit{See infra} part III.C.

\textsuperscript{29} \textit{See, e.g.,} SOLOMON BLOOM, A TREATISE ON THE LAW OF MECHANICS' LIENS AND BUILDING CONTRACTS (1910); FRANK JAMES, THE LAW OF MECHANICS' LIENS UPON REAL PROPERTY IN THE STATE OF CALIFORNIA (1900); MARSH, \textit{supra} note 10; MILLER & STARR, \textit{supra} note 11.

\textsuperscript{30} \textit{See, e.g.,} Bayard, \textit{supra} note 13; Rodney Moss, Mechanic's Liens and Related Remedies, 43 CAL. ST. B.J. 930 (1968); Charles E. Goulden et al., Comment, California Mechanics' Liens, 51 CAL. L. REV. 331 (1963).

\textsuperscript{31} \textit{See, e.g.,} JAMES ACRET, CALIFORNIA CONSTRUCTION LAW MANUAL (4th ed. 1990 & Supp. 1992); CALIFORNIA MECHANICS' LIENS AND OTHER REMEDIES (Craig H. Scott ed., 2d
deficiently drafted and often litigated recording statutes have never been the focus of an in-depth analysis.32

B. Development of the Mechanics' Lien in California: History and Policy

The current ambiguity in the mechanics' lien recording statutes is traceable to the confusion surrounding their development in mid-nineteenth-century California. Unknown in the state under Mexican law,33 mechanics' lien law in frontier California "was one of institutional inertia, inept draftsmanship, and technical confusion."34 The California Supreme Court thus played an important role in "promot[ing] coherent remedies" out of the legislation of the 1850s.35

In 1879 the California Constitution first provided for mechanics' liens.36 Like the early constitution, the current one provides "[m]echanics, persons furnishing materials, artisans, and laborers of every class [with] a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished."37 This provision further requires the legislature to


32. A 1963 law review comment undertook an "arduous study" of the "incredibly complex" California mechanics' lien statutes but neglected to include the recording statutes in its proposals for reform and may have misconstrued the meaning of the completion "equivalents." See Goulden et al., supra note 30, at 374.

33. GORDON M. BAKKEN, THE DEVELOPMENT OF LAW IN FRONTIER CALIFORNIA 93 (1985); see Macondray v. Simmons, 1 Cal. 393, 394-95 (1851). Macondray involved the claim of a material supplier who had furnished materials prior to California's adoption of the mechanics' lien law. Id. at 393-94. The court therefore applied Mexican civil law, which did not provide for a lien for a person who furnishes materials for the erection of a building. Id. at 394-95. The facts of Macondray demonstrate the importance of such liens to material suppliers and others whose labor and materials are used to construct a building. After using Macondray's materials to construct his building, Simmons, the owner, conveyed the property to a third party. Id. at 393. This conveyance left Macondray without any possibility of a claim against the property that his materials had helped construct. Id. at 394.

34. BAKKEN, supra note 33, at 92. In 1854 California Supreme Court Chief Justice Murray suggested that "[n]ot only is the Mechanics' Lien Law defective, but also the Recording Act itself." Rose v. Munie, 4 Cal. 173, 174 (1854).

35. BAKKEN, supra note 33, at 92, 94. Bakken provides an informative summary of the amounts and dispositions of mechanics' lien claims during this period. Id. at 95, 98.

36. CAL. CONST. of 1879, art. XX, § 15.

37. CAL. CONST. art. XIV, § 3. The 1976 constitution transferred the mechanics' lien provision from article XX (Miscellaneous Subjects), § 15 to article XIV (Labor Relations), § 3 and replaced the term "materialman" with the phrase "persons furnishing materials." Other-
provide "for the speedy and efficient enforcement of such liens." In implementing its constitutional mandate, the legislature enacted, and has regularly amended, various mechanics' lien statutes. It is currently accepted that a party who "(1) ... contributes to improvement of property, (2) at the request of the owner, a contractor, subcontractor, architect, or other statutory agent, (3) with the intention of improving the particular property" can claim benefits under the mechanics' lien statutes.

Mechanics' liens are created at the time the material or labor is first provided, but the statutory remedy is not triggered until a claim on the lien is recorded. While the focus of this Comment is on the recording of mechanics' lien claims, and the statutes that limit the time for such recording, it should be noted that such recording is only the first step in the enforcement of a mechanics' lien. Unless the claimant files suit to foreclose the lien within ninety days after the recording of the claim of lien, "the lien automatically shall be null and void and of no further force and effect." The California Supreme Court has held that the purpose of the mechanics' lien statutes is to balance the rights of claimants and owners.

38. Id. "Speedy and efficient" has been interpreted to mean that claimants' receipt of payment and owners' clearance of title should occur "as soon as possible." Borchers Bros. v. Buckeye Incubator Co., 59 Cal. 2d 234, 239, 379 P.2d 1, 3, 28 Cal. Rptr. 697, 699 (1963). The California Supreme Court has also affirmed that the mechanics' lien constitutional and statutory provisions do not violate the state or federal due process or takings clauses. Connolly Dev., Inc. v. Superior Court, 17 Cal. 3d 803, 827-28 & n.27, 553 P.2d 637, 653-54 & n.27, 132 Cal. Rptr. 477, 493-94 & n.27 (1976), appeal dismissed, 429 U.S. 1056 (1977).

39. See infra part II.C-D. With regard to mechanics' liens, the constitution is not self-executing; the provisions must be implemented by the legislature. Borchers Bros., 59 Cal. 2d at 237, 379 P.2d at 2-3, 28 Cal. Rptr. at 698.

40. ACRET, supra note 31, § 6.03, at 213. The term "mechanics' lien" is not separately defined by statute. The Civil Code defines a lien as "a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act." CAL. CIV. CODE § 2872 (West 1993). As applicable to mechanics' liens, a "mechanic" means a manual laborer. See WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1400 (3d ed. 1976). The term "mechanics'" lien is thus clearly more appropriate to the self-employed materialman or carpenter of Walker, see supra notes 2-7 and accompanying text, than it is to today's large-scale corporate general contractor.

41. "Until the claim is perfected by compliance with the statute, it is a mere inchoate personal right . . . . It has no tangible existence." 44 CAL. JUR. 3D Mechanics' Liens § 62, at 134 (1978) (footnote omitted). A common issue in mechanics' lien litigation is the priority of liens, often a dispute between a construction lender with a trust deed on the property and a contractor or other claimant who may or may not have previously contributed labor or material to the property. See, e.g., ACRET, supra note 31, §§ 6.26-.28, 6.33. A discussion of priorities in mechanics' lien claims is beyond the scope of this Comment.

42. CAL. CIV. CODE §§ 3115, 3116.

43. Id. § 3144 (West 1993).
ers. Nonetheless, early cases seemed to place greater emphasis on protection of the claimant versus the interests of the owner. The possibility that the early mechanics' lien recording statutes, and cases interpreting them, placed significantly more emphasis on the protection of powerless "[m]echanics, persons furnishing materials, artisans, and laborers of every class," should be considered in analyzing the evolution of the mechanics' lien recording statutes from their original codification to their current form.

C. Enactment of and Early Amendments to the Recording Statutes

When it decided Walker v. Hauss-Hijo, the California Supreme Court was just nine months old and the "completion" statute had been enacted the previous year during the first session of the newly created California Legislature. The first mechanics' lien legislation was passed on April 12, 1850. This was a narrow law that, according to one of the first courts to apply it, gave "ample security to the mechanic and

44. "While the essential purpose of the mechanics' lien statutes is to protect those who have performed labor or furnished material towards the improvement of the property of another, inherent in this concept is a recognition also of the rights of the owner of the benefited property." Borchers Bros., 59 Cal. 2d at 239, 379 P.2d at 3, 28 Cal. Rptr. at 699 (quoting Alta Bldg. Material Co. v. Cameron, 202 Cal. App. 2d 299, 303-04, 20 Cal. Rptr. 713, 716 (1962)). The court based its conclusions as to the underlying policies of the mechanics' lien statutes on the language of the California Constitution. Id. at 237, 379 P.2d at 2, 28 Cal. Rptr. at 698.

One important consideration is that the owner and other interested parties are provided with timely public notice of pending claims. ACRET, supra note 31, § 6.04; BLOOM, supra note 29, §§ 416, 418. Providing notice to the owner and other interested parties accomplishes the goal of encouraging the alienability and marketability of real property. See CAL. CIV. CODE § 880.020 (West Supp. 1993) (legislative declaration of public policy underlying marketable title legislation).

45. See, e.g., Hammond Lumber Co. v. Barth Inv. Corp., 202 Cal. 606, 610, 262 P. 31, 33 (1927) (stating that trivial imperfections clause "was added to the earlier act for the benefit of the lien claimant"); Marble Lime Co. v. Lordsburg Hotel Co., 96 Cal. 332, 338, 31 P. 164, 166 (1892) (holding that rights of lien claimants are not to be sacrificed to "the hardships which the present lien law sometimes imposes upon the owners of buildings"); see also Industrial Asphalt v. Garrett Corp., 180 Cal. App. 3d 1001, 1006, 226 Cal. Rptr. 17, 19 (1986) ("Ancient authority enunciates the purpose of the mechanics' lien: to prevent unjust enrichment of a property owner at the expense of a laborer or material supplier.").

46. CAL. CONST. art. XIV, § 3.
47. See infra part III.
48. 1 Cal. 183 (1850).
49. See 1 Cal. v. viii (1850) (Preface).
50. The first legislature met December 15, 1849, in San Jose and passed, among other matters, a lien law. Id. at vii.
52. BAKKEN, supra note 33, at 93.
furnisher of materials." The "completion" provision in this first law provided the following:

Any person wishing to avail himself of the provisions of [a mechanics' lien] . . . shall file in the Recorder's office of the county in which the building or wharf is situated, at any time before the expiration of sixty days after the completion of the building or repairs, notice of his intention to hold a lien . . . for the amount due . . . .

In this first mechanics' lien statute, the legislature made no attempt to define completion. Such definitions were not included until 1887. The original mechanics' lien statute was repealed, amended, supplemented, and explained numerous times by subsequent enactments between 1850 and 1862.

By 1862 the legislature had significantly expanded the mechanics' lien laws regarding who could claim under them and the type of property that could be claimed. Most significantly, the 1862 law differentiated

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53. Walker v. Hauss-Hijo, 1 Cal. 183, 185 (1850). The California Supreme Court has held that the mechanics' lien should be liberally construed to provide protection to the claimant. See Connolly Dev., Inc. v. Superior Court, 17 Cal. 3d 803, 826-27, 553 P.2d 637, 653, 132 Cal. Rptr. 477, 493 (1976), appeal dismissed, 429 U.S. 1056 (1977). On the other hand, the technical, procedural aspects of the mechanics' lien statutes, such as notice and timing requirements, are strictly construed because they are an "extraordinary remedy, in derogation of the common law." Bloom, supra note 29, at 21, 26-27.

54. Ch. 87, § 7, 1850 Cal. Stat. at 212.

55. See infra part III.D.1.a.

56. One commentator lists the early legislative history of the mechanics' lien law as follows:

An Act to provide for the lien of mechanics and others passed April 12, 1850 . . .

and—

An Act supplementary to the Act of April 12, 1850, approved May 17, 1853 . . . were repealed by—

An Act for securing liens of mechanics and others, approved April 27, 1855 . . . which act was repealed by—

An Act for securing liens to mechanics and others, approved April 19, 1856 . . . This act was explained and amended by—

An Act in addition to and explanatory of the act of April 19, 1856, approved March 4, 1857 . . . repealed April 4, 1857 . . .

An Act supplementary to the act of April 19, 1856, approved March 18, 1857 . . .

An Act to amend the act of April 19, 1856 approved April 22, 1858 . . .

An Act to amend the act of April 19, 1856 approved May 17, 1861 . . .


57. The legislature approved a revised and more expansive mechanics' lien statute on April 26, 1862. An Act in Relation to Liens of Mechanics and Others, ch. 297, 1862 Cal. Stat. 384. This Act repealed and replaced all of the then-existing mechanics' lien acts. Id. § 26, at 390; see General Laws, supra note 56, at 651.
between the period of limitations applicable to the contractor (sixty days) and the subcontractor or material supplier (thirty days).\footnote{8}

In 1872 the legislature first codified the mechanics' lien statutes in the Code of Civil Procedure.\footnote{9} While the suggestion by one commentator that the mechanics' lien statutes were amended in "almost every session of the Legislature"\footnote{60} is an exaggeration, the statutes were amended at least once in almost every decade between the first codification in 1872 and the transfer of all mechanics' lien statutes to the Civil Code in 1971.\footnote{61}

\section*{D. Present Recording Statutes}

The mechanics' lien statutes are now contained in Civil Code division 3 (Obligations), part 4 (Obligations Arising From Particular Transactions), title 15 (Works of Improvement), chapters 1 (General

\footnote{58. This is compared to the 60 days previously applicable to all claimants, see \textit{supra} text accompanying note 54, and the 90 days now applicable to all claimants when no notice of completion has been recorded, see \textit{infra} text accompanying notes 63, 65. The 1862 act was amended during the 1863-1864 legislative session. Act of Apr. 1, 1864, ch. 262, 1864 Cal. Stat. 269. While no substantive change was made relevant to this analysis, the persistent fine tuning and revision of the statute exemplifies the inability of the legislature to come up with a satisfactory mechanics' lien statute.}

\footnote{59. An Act to Establish a Code of Civil Procedure (codified at \textit{CAL. CIV. PROC. CODE} §§ 1183-1196). The statutes were included in the Code of Civil Procedure, regardless of the fact that their provisions dealt primarily with substantive rights, because the legislature desired to keep all mechanics' lien laws together. \textit{See BLOOM, supra} note 29, at 5.}

\footnote{60. \textit{ACRET, supra} note 31, at 210.}

\footnote{61. The mechanics' lien recording provisions were contained in Code of Civil Procedure § 1187 until they were moved to Code of Civil Procedure § 1193.1 in 1951, where they remained until transfer to the Civil Code in 1971. The amendments to these statutes between original codification in 1872 and transfer to the Civil Code were as follows:


The statutory history of repealed Code of Civil Procedure §§ 1187 and 1193.1 can be found in the historical notes to Civil Code §§ 3086, 3115, and 3116. The evolution of the language of these statutes and the effect of the amendments on the interpretation of the current recording statutes, Civil Code §§ 3086, 3115, and 3116, is the focus of part \textit{III infra}.}
Definitions) and 2 (Mechanics' Liens).62 Two statutes in chapter 2 and one statute in chapter 1 purport to define the length and starting point of the periods of limitation for recording mechanics' lien claims.

Civil Code section 3115 provides limitations on both premature and late recordation of mechanics' lien claims for original contractors:

Each original contractor, in order to enforce a lien, must record his claim of lien after he completes his contract and before the expiration of (a) 90 days after the completion of the work of improvement . . . if no notice of completion or notice of cessation has been recorded, or (b) 60 days after recordation of a notice of completion or notice of cessation.63

An original contractor is defined as “any contractor who has a direct contractual relationship with the owner.”64

Section 3116 sets limitations for all claimants other than the original contractor:

Each claimant other than an original contractor, in order to enforce a lien, must record his claim of lien after he has ceased furnishing labor, services, equipment, or materials, and before the expiration of (a) 90 days after completion of the work of improvement if no notice of completion or cessation has been recorded, or (b) 30 days after recordation of a notice of completion or notice of cessation.65

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62. Title 15 encompasses Civil Code §§ 3082-3267. "Work of Improvement" is the all-encompassing term used in the Civil Code to include virtually any type of construction, alteration, repair, or demolition project. CAL. CIV. CODE § 3106 (West 1993). The general definitions in chapter 1 of title 15, §§ 3082-3106, are applicable to mechanics' liens and other chapters in title 15. This Comment also discusses several other definitional statutes in chapter 1 of title 15 as they pertain to mechanics' liens: § 3092 ("notice of cessation"), see infra note 69; § 3093 ("notice of completion"), see infra note 68; § 3095 ("original contractor"), see infra note 64 and accompanying text.

Chapter 2 of title 15, §§ 3109-3154, contains the statutes pertaining particularly to mechanics' liens. Certain topics found in the early mechanics' lien statutes, see supra part II.C, are covered in the other chapters of title 15.

63. CAL. CIV. CODE § 3115.

64. Id. § 3095 (West 1993). For a more detailed discussion of the definition of "original contractor" and of the context within which the status becomes important, see Vaughn Materials Co. v. Security Pacific National Bank, 170 Cal. App. 3d 908, 216 Cal. Rptr. 605 (1985). An original contractor is to be distinguished from a general contractor. A general, or prime, contractor is a contractor who arranges for the construction of an entire project, hires subcontractors, coordinates all work, and is responsible for payment to subcontractors. BLACK'S LAW DICTIONARY 683 (6th ed. 1990). While a general contractor, by definition, will always be an original contractor, an original contractor does not necessarily qualify as a general contractor.

65. CAL. CIV. CODE § 3116.
Section 3086 defines "completion" for purposes of mechanics' liens, as referred to in sections 3115(a) and 3116(a), as well as other areas covered in the "Works of Improvement" chapter.66

"Completion" means, in the case of any work of improvement other than a public work, actual completion of the work of improvement. Any of the following shall be deemed equivalent to a completion:

(a) The occupation or use of a work of improvement by the owner, or his agent, accompanied by cessation of labor thereon.

(b) The acceptance by the owner, or his agent, of the work of improvement.

(c) After the commencement of a work of improvement, a cessation of labor thereon for a continuous period of 60 days, or a cessation of labor thereon for a continuous period of 30 days or more if the owner files for record a notice of cessation.67

Under both sections 3115 and 3116, the period of limitations on recording a claim of lien varies depending on whether a notice of completion68 or a notice of cessation69 has been recorded. If a notice of completion or notice of cessation is recorded, the original contractor has sixty days and other claimants thirty days from the date of recording of

66. In Eden v. Van Tine the court held that § 3086 could also be used to interpret the meaning of substantial completion in Code of Civil Procedure § 337.15. See 83 Cal. App. 3d 879, 884-85, 148 Cal. Rptr. 215, 218 (1978). See infra part IV.A for a discussion of the significance of Code of Civil Procedure § 337.15 to this analysis.

67. CAL. CIV. CODE § 3086 (West 1993). Section 3086 contains an additional paragraph, applicable only to public projects, that is not relevant to this analysis. See id.

68. Id. § 3093 (West 1993). A notice of completion is a notice filed with the county recorder that contains a statement that the work of improvement was completed on a certain date. Id. Section 3093 specifies the requirements of content and timing of this notice. Id. The requirement of filing a notice of completion appears to have been a product of the 1897 amendments to § 1187. See Act of Mar. 27, 1897, ch. 141, 1897 Cal. Stat. 202, 202-03. Between 1911 and 1951 the notice of completion was defined by statute as an equivalent to completion. See Act of May 1, 1911, ch. 681, § 4, 1911 Cal. Stat. 1316, 1317; Act of May 3, 1919, ch. 146, § 1, 1919 Cal. Stat. 190, 191; Act of June 19, 1929, ch. 870, § 1, 1929 Cal. Stat. 1928, 1928; Act of July 25, 1939, ch. 1068, § 1, 1939 Cal. Stat. 2994, 2994; Act of Feb. 13, 1947, ch. 28, § 1, 1947 Cal. Stat. 510, 511; Act of June 14, 1949, ch. 632, § 1, 1949 Cal. Stat. 1129, 1129-30.

Although the notice of completion is no longer defined as a constructive equivalent to completion, it has been held that a notice of completion serves as an owner's acceptance, and as such is an equivalent under § 3086(b). See Eden, 83 Cal. App. 3d at 885 n.6, 148 Cal. Rptr. at 218 n.6; cf. Munger & Munger v. McBratney, 131 Cal. App. 2d Supp. 866, 869, 280 P.2d 232, 233-34 (1955) (invalid notice of completion does not serve as owner's acceptance).

69. CAL. CIV. CODE § 3092 (West 1993). A notice of cessation is a "written notice, signed and verified by the owner or his agent," and filed with the county recorder, that contains a statement that labor has ceased on a work of improvement. Id.
either type of notice to record their claims of lien.70 This is in contrast to the ninety days from completion of the work of improvement that all claimants, including the original contractor, have to record a lien if neither a notice of completion nor notice of cessation is filed.71

A notice of completion must be recorded within ten days after the completion of a work of improvement.72 A notice of completion is invalid if recorded before actual completion of the work of improvement,73 or if its form does not comply with the requirements of the statute.74 In the case of an invalid notice of completion, the claimant's lien recording is controlled by the ninety-day period of limitations defined by sections 3115(a) or 3116(a) and not the shorter period defined by sections 3115(b) or 3116(b).75 Thus, the definition of completion provided by section 3086—the primary focus of this analysis—is applicable to subsections a and b of both sections 3115 and 3116.76

III. Analysis

A. Analytical Framework

Legislative histories of many California laws are inaccessible or, in some cases, nonexistent.77 This is especially true when older statutes, such as the mechanics' lien statutes at issue here, are involved.78 The absence of a legislative history precludes any consensus of opinion on the "completion" question and explains the need for inferential statutory analysis. Thus, the current versions of the mechanics' lien recording statutes79 must be examined in light of the language and policies of the

70. Id. §§ 3115(b), 3116(b). The original contractor has a longer period of time to give the owner the opportunity to withhold final payment to the original contractor until the expiration of the period of limitations as to other claimants. ACRET, supra note 31, at 225.
71. CAL. CIV. CODE §§ 3115(a), 3116(a).
72. Id. § 3093.
74. See CAL. CIV. CODE § 3093.
76. On the other hand, the filing of a notice of cessation is not dependent on completion of the work of improvement, and, as such, is not relevant to this analysis. For a detailed discussion of the application of the notice of cessation, see Robison v. Mitchel, 159 Cal. 581, 114 P. 984 (1911). The filing of a notice of cessation should be contrasted with actual cessation of labor for a stated period, which, under California Civil Code § 3086(c), is a constructive equivalent to completion. See infra part III.D.4.
77. California does not publish readily available legislative records that are as complete as the federal Congressional Record.
78. See BAKKEN, supra note 33, at 3.
79. CAL. CIV. CODE §§ 3086, 3115, 3116 (West 1993).
original mechanics' lien statutes. Whatever legislative intent underlies the statutes as initially drafted has long been diluted, either through legislative misunderstanding or sloppy drafting.

This Comment proposes an interpretation of the mechanics' lien recording statutes that is both consistent with their underlying policies and appropriate to the modern context within which they are most often applied. This interpretation clarifies and reconciles the uncertainty and conflicting viewpoints surrounding the statutes. The suggested interpretation of the mechanics' lien recording statutes is the result of combining existing judicial interpretation, as found in relevant appellate court decisions, with a novel and exhaustive statutory analysis.

Section 3086 of the Civil Code is the culmination of more than 100 years of modifications to the statutory definition of "completion." During this period numerous appellate court decisions construed the statutes; however, none are sufficiently persuasive or on point to provide a definitive answer to the completion question. Because no statutory history exists to evidence the legislative intent, the only way to determine the appropriate interpretation of the current mechanics' lien recording statutes is to analyze the evolution of the language of the statutes over several decades.

Over the years, minor changes in punctuation, sentence structure, and paragraph formation led to significant substantive modification of the statutes' meaning. The current statutes are a result of these modifications. A threshold question is whether these effects were intended or were simply the result of sloppy drafting. In some cases the amendments may have been inspired by judicial decisions that construed—or, in some cases, misconstrued—prior versions of the statutes.

Civil Code sections 3115(a) and 3116(a) both refer to the phrase "completion of the work of improvement" as the starting point for the period of limitations on the recording of a mechanics' lien. To define the term "completion," one must turn to section 3086, which purports to define the term. While the language of section 3086 is deceptively

80. See supra notes 44–46 and accompanying text.
81. See supra note 61.
82. Nonetheless, these decisions provide valuable insight into the construction practices and legal environment of the time.
83. See infra part III.C-D.
84. See infra part III.D.1.
85. See supra text accompanying notes 63, 65.
86. See supra text accompanying note 67. Neither § 3115 nor § 3116 refers expressly to § 3086. Nonetheless, for two reasons, it would be completely illogical not to refer to § 3086 to define "completion" for purposes of §§ 3115 and 3116. First, § 3086 is contained in the defini-
plain, application of the statute is by no means straightforward. The analysis that follows is divided into three sections corresponding to three separate, yet interrelated, issues: (1) the scope of the recording statutes vis-à-vis premature and late recording,87 (2) the actual versus substantial completion dichotomy inherent in the first sentence of section 3086,88 and (3) the completion equivalents as defined in section 3086(a), (b), and (c).89

B. Scope of the Recording Statutes

There are two basic time limitations on the recording of a mechanics' lien claim. First, a claimant may not record a lien claim until some minimum level of work has been performed or materials provided.90 Second, a claimant must record the lien claim within a designated period after the occurrence of some event.91 Both of these limitations have existed since the first enactment of the California mechanics' lien statutes.92 In some cases it is not clear whether statutory amendments to the recording statutes are intended to apply to one or both time limitations.93

1. Premature recording

a. original contractor

Civil Code section 3115 now provides that the original contractor cannot record a claim of lien until “after he completes his contract.”94 Before 195195—except for a brief period between 1897 and 191196—the relevant statutes did not contain any explicit limit on the premature recording of an original contractor's mechanics' lien claim. During this
period the only limitation on an original contractor's recording was that the claim of lien be recorded, at the latest, *within sixty days* of the completion of the contract. This language did not preclude an original contractor from recording a claim of lien before the completion of the contract.

There is no evidence as to why the legislature removed the explicit language limiting an original contractor's premature recording in 1911 and then replaced it in 1971. Nonetheless, the absence of such language did not lead to any litigation involving a determination of whether a contractor's claim was recorded too soon. One can only assume that both premature and late recording were based on completion of the contract during this period.

b. other claimants

Other claimants' liens are not considered premature if recorded after they have "ceased furnishing labor, services, equipment, or materials," even if the project as a whole and/or the original contractor's contract with the owner remain incomplete. This individualized limitation on premature recording has been in effect since 1911. Such a basis for limiting other claimants' premature recording removed any problems of determining whether an entire work of improvement was complete when the other claimant recorded his or her claim of lien. Hence, the premature recording limitation in Civil Code section 3116 does not result in significant problems of statutory construction or practical application.

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98. The requirement that an original contractor record a claim of lien "within sixty days after the completion of his contract," see supra text accompanying note 97, does not necessarily preclude recording a claim of lien before the completion of the contract. But the statute can be interpreted that way, and that is most likely the construction given the phrase by the courts.

99. The term "other claimant(s)" as used herein refers to all claimants other than the original contractor.

100. CAL. CIV. CODE § 3116.


102. Prior to 1911, other claimants could not record a claim of lien until after the completion of the project as a whole. See, e.g., Act of Feb. 16, 1874, ch. 586, § 2, 1874 Cal. Stat. 409, 410. Basing premature recording on completion of the entire project could lead to extreme unfairness to the other claimant. See, e.g., Schwartz v. Knight, 74 Cal. 432, 434, 16 P. 235, 236 (1887) (holding material supplier's claim of lien premature when recorded before actual completion, even if owner abandoned construction of building). In 1887 this potential for injustice was at least partially cured by the addition of the "trivial imperfections" clause. See infra part III.B.3.
2. Final recording

The current mechanics' lien recording statutes require both the original contractor and the other claimant to record a claim of lien within ninety days after "completion of the work of improvement." Since 1850, when the legislature enacted the first mechanics' lien statute, the final date for recording a lien claim has been based on completion of the project as a whole.

a. original contractor

In cases where neither a notice of completion nor a notice of cessation is recorded, an original contractor must record a claim of lien at the latest "before the expiration of . . . 90 days after the completion of the work of improvement." At the same time, an original contractor may not record a claim of lien until "after he completes his contract." In certain circumstances the operation of these two provisions may make it impossible for an original contractor to record a claim of lien before the expiration of the ninety-day final recording period.

For example, "[c]ompletion of the work of improvement" is usually defined pursuant to the substantial or constructive completion provisions of Civil Code section 3086. Therefore, it is conceivable that an original contractor's contract is not complete, but the work of improvement is. Thus, the language of section 3115 suggests that an original contractor may not record a claim of lien if the contract is not complete, even though the period of limitations has begun to run.

b. other claimants

In cases where neither a notice of completion nor a notice of cessation is recorded, other claimants, like the original contractor, must record a claim of lien no later than "90 days after completion of the work of improvement."

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103. CAL. CIV. CODE §§ 3115(a), 3116(a). This assumes that no notice of completion is filed. See id. §§ 3115(b), 3116(b); supra notes 68-71 and accompanying text.
104. See supra note 54 and accompanying text.
105. The determination of a practical definition for the term "completion" is, of course, the primary focus of this analysis.
106. CAL. CIV. CODE § 3115(a).
107. Id. § 3115.
108. Id. § 3115(a).
109. See infra part III.C-D.
110. In other words, a court could find that minor work still required to be completed pursuant to the original contractor's contract with the owner is not significant enough to preclude a determination that the work of improvement is complete for purposes of § 3086.
111. See Moss, supra note 30, at 934 ("There can be no premature recordation of the lien except that the claimant must complete his contract before he can record his lien.").
improvement." At the same time, other claimants may not record a lien claim until after they have "ceased furnishing labor, services, equipment, or materials."

Similar to the situation described above with regard to the original contractor, it is possible that a work of improvement may be considered complete, for purposes of the substantial and constructive completion provisions of section 3086, before the other claimant has ceased furnishing labor, services, equipment, or materials. If so, the period of limitations on recording a claim of lien may expire before the other claimant is permitted to actually record the claim of lien.

3. Scope of the trivial imperfections clause

The circumstances surrounding the addition of the trivial imperfections clause reveal that the clause was designed to apply to premature, as opposed to final, recording. The early mechanics' lien claimant was not permitted to record a lien claim until after completion of the contract (original contractor) or work of improvement as a whole (other claimant). Therefore, a property owner could attempt to prevent a claimant from recording a lien claim by pointing to minor, or trivial, incompletions in the contract or work of improvement. In 1887, in order to avoid this possibility, the legislature added the "trivial imperfections" clause to former Code of Civil Procedure section 1187.

The plain language of the trivial imperfections clause also supports a finding that the clause was intended to apply only to premature recording. When first added to the recording statute, the trivial imperfections clause stated that "any trivial imperfection in the said work, or in the construction of any building, improvement, or structure... shall not be deemed such a lack of completion as to prevent the filing of any lien." It is clear from this language that the provision was originally

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112. CAL. CIV. CODE § 3116(a). It is surely insignificant that the language of § 3115(a) refers to "the completion of the work of improvement," whereas § 3116(a) refers simply to "completion of the work of improvement."
113. Id. § 3116.
114. See supra part III.B.1.
115. Whether or not the owner's argument would ultimately prevail in a court of law, the owner was in a strong position to at least delay the recording of a mechanics' lien claim.
116. Act of Mar. 15, 1887, ch. 137, § 3, 1887 Cal. Stat. 152, 155. See infra part III.C.1 for a detailed analysis of the trivial imperfections clause and its significance to the modern statutory definition of "completion."
118. Ch. 137, § 3, 1887 Cal. Stat. at 155 (emphasis added).
intended to apply only to premature recording. If the trivial imperfections language was intended to apply to late filing, the legislature would have used “extend” or “delay” instead of “prevent.”

The underlying policies and plain language of the 1887 version of section 1187 notwithstanding, the California Supreme Court held as early as 1890 that the trivial imperfections and equivalents clauses applied to the measurement of late recorded, as well as prematurely recorded, claims of lien. This interpretation is consistent with the court’s expanded view of the mechanics’ lien as providing protection to the owner as well as the claimant.

Removed from its original context, the statute appears to have developed applicability beyond that originally intended. That the trivial imperfections and equivalents clauses were intended to deal only with premature recording must be considered in analyzing the application of the current statute defining completion, Civil Code section 3086, to the final recording limitations of sections 3115 and 3116. Furthermore, any doctrine of substantial completion implied into section 3086 that benefits the owner at the expense of the claimant must be considered in light of the scope of the statute as originally enacted.

4. Scope of the completion equivalents

The completion equivalents clause first appeared in the same amendment to Code of Civil Procedure section 1187 as the trivial imperfections clause:

[I]n case of contracts, the occupation or use of the building, improvement, or structure by the owner, or his representative, or the acceptance by said owner or his agent . . . shall be deemed conclusive evidence of completion; and cessation from labor for thirty days upon any unfinished contract, or upon any unfinished building, improvement, or structure, or the alteration, addition to, or repair thereof, shall be deemed equivalent to a completion thereof for all the purposes of this chapter.\(^{123}\)

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119. See, e.g., Harlan v. Stufflebeem, 87 Cal. 508, 512, 25 P. 686, 687 (1891) (“If the lien can be ‘filed’ notwithstanding such imperfection, it must follow that the claimant can foreclose his lien . . . .”).

120. See Kerchoff-Cuzner Mill & Lumber Co. v. Olmstead, 85 Cal. 80, 83-84, 24 P. 648, 648 (1890).

121. See supra notes 44-46 and accompanying text.

122. See infra part III.D for a detailed analysis of the completion equivalents.

123. Act of Mar. 15, 1887, ch. 137, § 3, 1887 Cal. Stat. 152, 155. The completion equivalents were not placed into a separate sentence until the trivial imperfections language was removed in 1929. See Act of June 19, 1929, ch. 870, § 1, 1929 Cal. Stat. 1928, 1928.
The fact that the completion equivalents were added to section 1187 at the same time, and in the same sentence, as the trivial imperfections language is strong evidence that the scope of the completion equivalents is the same as that of the trivial imperfections clause. If, as suggested, the trivial imperfections exception was added for the benefit of the lien claimant and was intended only to affect premature recording, then the equivalents should be construed as similarly limited.

C. Substantial Completion

The mechanics' lien claimant must record a claim of lien "before the expiration of . . . 90 days after completion of the work of improvement." The language of the mechanics' lien recording statutes has never explicitly stated that completion of a work of improvement should be measured in terms of substantial completion. Nonetheless, since the mid-nineteenth century, most of the courts that have interpreted the recording statutes, rightly or wrongly, have inferred the doctrine of substantial completion.

1. Trivial imperfections

The early mechanics' lien statutes provided no clue as to how "completion of any building, improvement, or structure" should be interpreted. Did the legislature intend that a building, improvement, or structure must be absolutely and totally complete, or would partial completion be sufficient to begin the running of the period of limitations on the recording of lien claims?

Late nineteenth- and early twentieth-century courts, looking for assistance in deciding whether minor "incompleteness" extended completion, eagerly applied the trivial imperfections language, as added to the statute in 1887, to cases involving claims of late recording. In

Amendments to § 1187 between 1887 and 1929 retained the conjunctive connection between the trivial imperfections and equivalents clauses. See Act of May 3, 1919, ch. 146, § 1, 1919 Cal. Stat. 190, 190-91; Act of May 1, 1911, ch. 681, § 4, 1911 Cal. Stat. 1316-17; Act of Mar. 27, 1897, ch. 141, 1897 Cal. Stat. 202, 204.

124. CAL. CIV. CODE §§ 3115(a), 3116(a).

125. See infra notes 127, 133 and accompanying text.

126. Act of Feb. 16, 1874, ch. 586, § 2, 1874 Cal. Stat. 409, 410 (emphasis added). The 1874 statute required the original contractor and other claimants to record their claims of lien within 60 days and 30 days respectively of "completion of any building, improvement, or structure." See id.

127. See, e.g., Hammond Lumber v. Yeager, 185 Cal. 355, 358-59, 197 P. 111, 112-13 (1921) (holding that removal and replacement of defective wood-stone work in kitchen and bathroom at cost of $35.50 is trivial and does not extend completion of residence); Coss v. MacDonough, 111 Cal. 662, 666, 44 P. 325, 326 (1896) (holding that final construction of
most cases the "triviality" of incomplete work was measured by comparing the value of the incomplete work with the overall cost of the construction project.\textsuperscript{128} Other courts determined that trivial imperfections should be measured with respect to the claimant's right of recovery under the contract with the owner.\textsuperscript{129} Thus, although it was clearly designed to deal with premature recording only,\textsuperscript{130} the trivial imperfections clause was embraced by courts as the first sign that substantial completion was sufficient to begin the running of the period of limitations on the recording of a lien claim.

Although the explicit language that created an exception to the rule against premature lien recording\textsuperscript{131} was removed from the statute in 1929,\textsuperscript{132} courts continued to infer the concept of trivial imperfections in the statute in support of an implied doctrine of substantial completion.\textsuperscript{133} Almost thirty years after the deletion of the trivial imperfections language, the court in \textit{Lewis v. Hopper}\textsuperscript{134} expressly noted that it was not

\begin{itemize}
\item Elevator is trivial and does not extend completion of building costing $250,000 to construct;\n\item Lippert v. Lasar, 4 Cal. Unrep. 74, 75-76, 33 P. 797, 798 (1893) (holding that placing door frame in cellar addition and one-hour's work in filling small hole was trivial compared to total cost of cellar addition of $365);\n\item Santa Clara Valley Mill & Lumber Co. v. Williams, 3 Cal. Unrep. 700, 703, 31 P. 1128, 1129 (1892) (holding that seven dollar cost to replace "finial" and seat in water-closet compared to total cost to construct house of $4700 was trivial so as not to extend completion for purposes of filing lien);\n\item Shumway v. Woolwine, 84 Cal. App. 220, 225, 257 P. 898, 900 (1927) (holding that painting and decorating valued at $160 is trivial and does not extend completion of residence costing $22,000 to build);\n\item Hubbard v. Jurian, 47 Cal. App. 543, 546-47, 100 P. 1052, 1054 (1920) (holding that touch-up painting is trivial and does not extend completion of building costing $9222 to construct);\n\item Mott v. Wright, 43 Cal. App. 517, 520 (1919) (holding that repapering of hallway at cost of $2.40 and two hours labor is trivial and does not extend completion of flats costing $1800 to construct).
\end{itemize}

\textsuperscript{128} See supra note 127.

\textsuperscript{129} See, e.g., Bianchi v. Hughes, 124 Cal. 24, 27, 56 P. 610, 611 (1899) (holding defects not trivial if they are "so substantial that the contractor would not have a right of recovery upon his contract").

\textsuperscript{130} See supra part III.B.3.

\textsuperscript{131} There were three amendments to § 1187 between 1887, when the trivial imperfections language was added, and 1929, when it was removed. See Act of May 3, 1919, ch. 146, § 1, 1919 Cal. Stat. 190; Act of May 1, 1911, ch. 681, § 4, 1911 Cal. Stat. 1316; Act of Mar. 27, 1897, ch. 141, 1897 Cal. Stat. 202. None of these amendments made any significant change to the trivial imperfections clause. See infra part III.D for an analysis of the impact of minor punctuation changes made by these amendments with regard to the completion equivalents.


\textsuperscript{133} See, e.g., Hundley v. Marinkovich, 53 Cal. App. 2d 288, 293, 127 P.2d 600, 603 (1942) (holding that replacement of defective parts is trivial and does not extend "completion" of apartment house); Grettenberg v. Collman, 119 Cal. App. 7, 10-11, 5 P.2d 944, 945-46 (1931) (holding that replacement of broken window panes, dash-coating of wall, connection of gas and electric equipment, and cutting of lawn is trivial and does not extend completion of residence).

\textsuperscript{134} 140 Cal. App. 2d 365, 295 P.2d 93 (1956). See infra part III.C.3.a for a detailed discussion of the significance of \textit{Lewis} to modern mechanics' lien litigation.
apparent that the absence of the "trivial imperfections" language from later versions of the statute signaled a change in the substantive law.\textsuperscript{135} The concept of trivial imperfections continues to appear in modern-day discourse regarding the issue of substantial completion vis-à-vis mechanics' lien recording.\textsuperscript{136}

2. "Actual" completion

Shortly after the trivial imperfections clause was added to section 1187, the California Supreme Court, in \textit{Willamette Steam Mills Lumbering & Manufacturing Co. v. Los Angeles College Co.},\textsuperscript{137} provided the following interpretation of the statute:

In the absence of any statutory qualification or definition of the term "completion," there would be no room for its construction by the court, but it would be construed to mean \textit{actual} completion, and would be a question of fact to be determined in each case. The statute has, however, provided that a substantial completion is all that is required in any case, . . . by declaring that a "trivial imperfection" shall not be deemed such a lack of completion as to prevent the filing of a lien.\textsuperscript{138}

According to the court, completion of a work of improvement could thus be either actual or substantial. There is no further mention of the concept of "actual" completion in the cases or the statutes for almost eighty years.

Then, in 1969, the legislature transferred the mechanics' lien statutes from the Code of Civil Procedure to the Civil Code,\textsuperscript{139} and in the process drafted a statute dedicated solely to providing a definition of

\textsuperscript{135} Lewis, 140 Cal. App. 2d at 367, 295 P.2d at 95. In Lewis a subcontractor argued that the timeliness of his claim should not be measured from the date of substantial completion of the building. \textit{Id.} at 366-67, 295 P.2d at 95. The plaintiff based his argument, inter alia, on the assertion that the removal of the trivial imperfections language in 1929 meant that the legislature had intended to remove the concept of substantial completion from the recording statute. \textit{See} id.

\textsuperscript{136} See, e.g., Gibbs & Hunt, \textit{supra} note 31, § 5.3, at 74. Part of the reason for the continued vitality of the trivial imperfections concept is the large body of case law that relies on the pre-1929 statutes containing the trivial imperfections language. \textit{See supra} notes 127, 133 and accompanying text.

\textsuperscript{137} 94 Cal. 229, 29 P. 629 (1892).

\textsuperscript{138} \textit{Id.} at 237-38, 29 P. at 632 (emphasis added).

"completion." The first sentence of that statute proclaims that "'completion' means, in the case of any work of improvement . . ., actual completion of the work of improvement." The derivation and intended meaning of the term "actual" is uncertain. In transferring the mechanics' lien statutes from the Code of Civil Procedure to the Civil Code, the legislature stated that “[t]his act shall not be construed to constitute a change in, but shall be construed as declaratory of, the preexisting law.” The stated intent notwithstanding, it is unclear of what preexisting law the term "actual completion" is declaratory.

It is unlikely—although the language of the opinion appears to call for such a legislative finding—that the legislature based its definition of completion on language from the 1892 Willamette Steam Mills case. Nonetheless, the statement that the Civil Code statutes are to be construed as declaratory of the preexisting law does signify that actual completion should be construed as consistent with this preexisting law. Unfortunately, as illustrated by the discussion of the early recording statutes, both before and after deletion of the trivial imperfections clause, it is in no way clear what the preexisting law was.

Black's Law Dictionary contains the following definition of the word "actual":

[R]eal; substantial; existing presently in fact; having a valid objective existence as opposed to that which is merely theoretical or possible. Opposed to potential, possible, virtual, theoretical, hypothetical, or nominal. Something real, in opposition to constructive or speculative; something existing in act. It is used as a legal term in contradistinction to virtual or constructive as of possession or occupation.

This definition conflicts with the interpretation of the court in Willamette Steam Mills, in which the court contrasted actual with substantial. Although Willamette Steam Mills is the only case to explicitly

140. CAL. CIV. CODE § 3086 (replacing in part CAL. CIV. PROC. CODE § 1193.1).
141. Id. Such language does not appear in any of the dozen or so amendments to the statute as it formerly existed in the Code of Civil Procedure. See supra note 61 for the session laws corresponding to these amendments.
143. “In the absence of any statutory qualification or definition of the term ‘completion,’ . . . it would be construed to mean actual completion.” Willamette Steam Mills Lumbering & Mfg. Co., 94 Cal. at 237-38, 29 P. at 632.
144. See id.; supra notes 137-38 and accompanying text.
145. See supra part III.C.1.
146. BLACK'S LAW DICTIONARY, supra note 64, at 34.
differentiate between actual and substantial completion, other cases have been interpreted, at least by some practitioners, to require more than substantial completion to begin the running of the period of limitations on the recording of mechanics’ lien claims.\textsuperscript{148}

Nonetheless, the legislative and judicial histories surrounding the recording statutes suggest that actual completion should be interpreted as substantial completion. If the inclusion of the word “actual” in Civil Code section 3086 was intended to preclude substantial completion as a sufficient point to initiate the running of the time for recording, then either a century of cases was wrongly decided or the transfer of the statutes to the Civil Code made a substantive change in the law, notwithstanding legislative claims to the contrary.\textsuperscript{149}

3. Modern application

The ambiguous “actual completion” language of Civil Code section 3086, when combined with a long history of uncertain legislative intent and inconsistent judicial interpretation, provides the modern practitioner with the opportunity to construe the statute to best serve his or her client. If a contractor, material supplier, or subcontractor is potentially delinquent in recording a claim of lien, his or her lawyer can suggest a reading of “actual” that requires total—as opposed to substantial—completion, and then argue that certain minor omissions in the construction project preclude a finding of such completion. On the other hand, an owner hoping to defeat a mechanics’ lien claim can argue, based on an interpretation of section 3086 that equates actual with substantial, that the project was substantially complete more than ninety days prior to the recording of the claim,\textsuperscript{150} notwithstanding the fact that work continued, or continues, on the project.

\textit{a. Lewis v. Hopper}

Because of its outcome and relative contemporaneity, \textit{Lewis v. Hopper}\textsuperscript{151} is the most popular case cited by practitioners and commentators as standing for the proposition that minor omissions extend the time for recording a mechanics’ lien claim on what is otherwise a completed pro-

\textsuperscript{148} See infra part III.C.3.a.
\textsuperscript{149} See supra note 142 and accompanying text.
\textsuperscript{150} See CAL. CIV. CODE §§ 3115(a), 3116(a) (requiring claim of lien to be recorded 90 days after completion if no notice of completion or cessation recorded).
\textsuperscript{151} 140 Cal. App. 2d 365, 295 P.2d 93 (1956).
ject.152 The minor work in Lewis was four hours of labor to install four soap dispensers.153 The installation of the soap dispensers was indeed trivial in comparison to the construction of the entire house, and as such, presents the ideal fact pattern for a party attempting to prove that a work of improvement was not complete until the later performance of some trivial work.

Reliance on Lewis as supporting a rejection of the doctrine of substantial completion in the recording statute is nonetheless difficult to sustain. The Lewis court expressly stated that its holding did not turn on a reading of the mechanics' lien limitation on action statutes; furthermore, the court declined to overrule a substantial body of law holding that trivial imperfections and other work beyond substantial completion do not extend the time for filing mechanics' liens claims.154 The court's holding was limited to the facts before it, and the court stated only that, where a surety bond required that an action be commenced within six months "after completion of the work described in said contract," the project was not completed until the installation of four soap dispensers as required by the contract.155

Such a reading of Lewis is consistent with interpretations of its holding by the supreme courts of Hawaii and Nevada, both of which declined to apply mechanics' lien limitation-on-action provisions to cases before them.156 In fact, although Lewis has been cited for its holding on the surety bond issue, there is no record of any court in the past thirty-five years that has cited the case for the proposition that the time for recording mechanics' lien claims is extended by the performance of minor work after substantial completion. Nonetheless, practitioners and commentators continue to cite Lewis in support of this proposition.157

152. See, e.g., Acret, supra note 31, § 6.31, at 229; Gibbs & Hunt, supra note 31, § 8.29, at 151; Hunt, supra note 31, at 32.
153. 140 Cal. App. 2d at 366, 295 P.2d at 94.
154. Id. at 367, 295 P.2d at 95. The court expressly noted that it was not apparent that the removal of the "trivial imperfection" language from later versions of the statute signaled a change in the substantive law. Id.
155. Id.
157. See, e.g., Acret, supra note 31, § 6.11; Gibbs & Hunt, supra note 31, § 8.29, at 151. An argument against substantial completion can also be made based on the "actual completion" language in California Civil Code § 3086. See supra note 146 and accompanying text. Such an argument normally would be made on behalf of mechanics' lien claimants who are alleged to have recorded their claims too late.
TRIVIAL(?) IMPERFECTIONS

b. rationale for substantial completion
   i. illogical consequences

Serious problems result from a rule of law that does not provide for some measure of partial completion. This is especially true with regard to today's large-scale construction projects, where minor touch-up and maintenance work may continue for many years after initial occupancy or use by the owner. In fact, 'it is very seldom in any substantial construction contract that the main construction activity just suddenly ceases with no loose ends dangling.'

Ongoing litigation involving the construction of a luxury hotel provides a good example of a situation in which requiring more than substantial completion is problematic. In Waterfront Construction #1 v. J.A. Jones Construction Co., the trial court held that a mechanics' lien recorded by the original contractor within ninety days of the testing of one of the new hotel's elevators was timely because such work was 'prescribed by the plans and specifications.' Under the judge's reasoning in Waterfront, if a contract calls for periodic maintenance by the contractor to continue indefinitely, a claimant may be able to record a mechanics' lien claim years after actual completion of the project, arguing that such work is called for in the plans and specifications.

ii. policy considerations

It remains to be decided, absent the applicability of the concept of trivial imperfections, whether some other doctrine of substantial comple-

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158. Most modern construction contracts provide for the completion of routine, ongoing repairs and corrections to the construction project. This work is commonly described as being on a "punch-list." Most practitioners and lawyers agree that punch-list work is post-completion and therefore does not extend the time for recording a mechanics' lien claim. Conversely, if a task is not categorized as punch-list, the task may, arguably, be required to be completed before the project as a whole can be considered complete. This fine distinction may create unusual situations. For instance, if a room is inadvertently painted red when it was supposed to be painted white, the repainting might be considered punch-list work and therefore not prevent the project from being considered complete for purposes of beginning the running of the period of limitations on the recording of liens. On the other hand, if the wall was not painted at all, the incomplete job may prevent the running of the period of limitations.

159. O'Leary, supra note 31, at 298.


162. For instance, if the hotel elevator is tested annually pursuant to the construction contract, the period of limitations on the recording of a mechanics' lien claim might run for as many years as testing continues—perhaps for as long as the hotel exists.
tion is implied in Civil Code section 3086. The answer to this question depends in part on whether the legislature, in enacting the original mechanics' lien statutes, intended primarily to protect the claimant or rather to balance the rights of claimants and owners.

The doctrine of substantial completion benefits claimants by permitting a claim of lien to be recorded even if the project is incomplete. On the other hand, a doctrine of substantial completion that permits the owner to claim that a project is complete, so as to bar a claimant's recording as late, benefits the owner, not the claimant. Arguably, courts that apply a doctrine of substantial completion so as to bar a claimant's recording are frustrating the pro-claimant policies underlying mechanics' lien law. Conversely, in many cases it would be unfair to the owner to delay the running of the period of limitations until a work of improvement is totally complete.

Thus, in deciding whether a doctrine of substantial completion should be read into section 3086, the competing policy considerations discussed above must be balanced. If the purpose of adding the "trivial imperfection" and "equivalents" language was for the protection of the claimant, then any doctrine of substantial completion read into the statute should be interpreted in light of this policy.


164. The courts' interpretation of these policy goals has varied in the 140 years since the enactment of the original mechanics' lien laws in California. See supra notes 44-46 and accompanying text.

165. Since recording a lien claim is only the first step in the enforcement of a claimant's cause of action for payment from the owner, see CAL. CIV. CODE § 3144 (West 1993); supra note 43 and accompanying text, the claimant normally would want to record sooner rather than later.

166. The claimant has only 90 days from completion to record a lien claim. CAL. CIV. CODE §§ 3115(a), 3116(a). If the claim is not recorded within the 90 day period, the lien is lost and the claimant has only an unsecured claim against the owner. It is assumed for purposes of this discussion that neither a notice of completion nor notice of cessation has been filed; thus, the 90 day limit applies, not the 30 or 60 day limit that would apply if either notice was filed. See id. §§ 3115(b), 3116(b).

167. Such an action would create enormous uncertainty in the real property markets. A buyer or lender would never know if a late claim will be held valid because of some remaining minor defect in the project.
D. Constructive Completion: The Completion Equivalents

Civil Code section 3086\(^{168}\) provides that occupation or use,\(^{169}\) acceptance,\(^{170}\) and cessation of labor\(^{171}\) "shall be deemed equivalent to a completion."\(^{172}\) The basic concept and language of section 3086 can be traced to the 1887 amendments to Code of Civil Procedure section 1187.\(^{173}\) Nonetheless, slight variations in the completion equivalents as drafted in section 3086, when contrasted with their wording in the 1887 and subsequent amendments to section 1187, have a significant impact on today's mechanics' lien claimant.

As with the mechanics' lien statutes in general, no legislative history is available to explain the legislative intent underlying the amendments to the completion equivalents.\(^{174}\) Thus, it is uncertain if the subtle changes in punctuation and paragraph structure, which gradually altered the original meaning and context of the completion equivalents, represent substantive legislative intent or merely sloppy drafting. This statutory history represents a post-hoc attempt to explain the significance, or lack thereof, of the amendments to the completion equivalents.\(^{175}\)

This section analyzes in turn each of the three completion equivalents—occupation or use,\(^{176}\) acceptance,\(^{177}\) and cessation of labor.\(^{178}\) Because it has resulted in the most substantive alteration, the primary focus is on the occupancy or use equivalent.

1. Statutory history of the completion equivalents

a. completion equivalents as they first appeared—1887

As their definitions first appeared in the mechanics' lien recording statute, occupancy or use, acceptance, and cessation from labor were each considered a separate and independent equivalent to completion:

168. See supra text accompanying note 67 for the complete text of § 3086.
169. CAL. CIV. CODE § 3086(a).
170. Id. § 3086(b).
171. Id. § 3086(c).
172. Id. § 3086. These events are herein referred to as “the completion equivalents” or “the equivalents.” The equivalents are termed “constructive” completion, Robison v. Mitchel, 159 Cal. 581, 586-87, 114 P. 984, 988 (1911), as contrasted with substantial completion, see supra part III.C, or actual completion, see supra part III.C.2.
174. See supra notes 77-78 and accompanying text.
175. While a detailed grammatical analysis of a century-old statute may appear trivial, a proper interpretation of modern Civil Code § 3086 depends upon an analysis of the language of the ancient statutes from which the present statute was derived.
176. See infra part III.D.2.
177. See infra part III.D.3.
178. See infra part III.D.4.
In case of contracts, the occupation or use of the building, improvement, or structure by the owner, or his representative, or the acceptance by said owner or his agent . . . shall be deemed conclusive evidence of completion; and cessation from labor for thirty days upon any unfinished contract, or upon any unfinished building, improvement, or structure, or the alteration, addition to, or repair thereof, shall be deemed equivalent to a completion thereof for all the purposes of this chapter.  

Occupancy and acceptance were each considered "conclusive evidence of completion," whether or not accompanied by a cessation of labor. Because of the placement of the semicolon in this clause, it is impossible to interpret occupancy, acceptance, and cessation from labor as anything but three separate and distinct equivalents to completion.

b. 1897 amendment to the completion equivalents

In 1897 the legislature amended section 1187 with minor change:  
In all cases the occupation or use of a building, improvement, or structure, by the owner, or his representative, or the acceptance by said owner or his agent of said building, improvement, or structure, and cessation from labor for thirty days upon any contract or upon any building, improvement, or structure, or the alteration to, or repair thereof, shall be deemed equivalent to a completion thereof for all the purposes of this chapter.  

Depending on how the sentence structure is interpreted, the equivalents clause of section 1187, as amended in 1897, may have required a corresponding cessation of labor for thirty days if occupancy or acceptance was to be considered an equivalent to completion. Such an interpretation of the 1897 amendment is consistent with that given to it by the California Supreme Court in Robison v. Mitchel.

This amendment makes a separate sentence out of the clause containing the trivial imperfections and equivalents language. The 1897

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179. Ch. 137, § 3, 1887 Cal. Stat. at 155. This was the second amendment to Code of Civil Procedure § 1187, which was enacted in 1872. The equivalents were appended to the end of the trivial imperfections clause, see supra part III.C.1, which was added to the statute by the same amendment.

180. See Ch. 137, § 3, 1887 Cal. Stat. at 155.


182. See id. The rationale behind the distinction in the early versions of the statute is discussed in Willamette Steam Mills Co. v. Los Angeles College Co., 94 Cal. 229, 238-40, 129 P. 629, 632-33 (1892).

183. 159 Cal. 581, 587-88, 114 P. 984, 987 (1911) (holding that cessation of labor is required for occupancy or acceptance to be considered equivalent to completion).
amendment also changes the scope of the occupation and acceptance equivalents from "in case of contracts" to "in all cases."184

c. 1911 amendment to the completion equivalents

In 1911 a third amendment to section 1187 reworded the equivalents clause so that cessation of labor was definitely an alternative equivalent to occupation or acceptance:

[I]n all cases, any of the following shall be deemed equivalent to a completion for all the purposes of this chapter: the occupation or use of a building, improvement, or structure, by the owner, or his representative; or the acceptance by said owner or said agent, of said building, improvement, or structure, or cessation from labor for thirty days upon any contract or upon any building, improvement or structure or the alteration, addition to, or repair thereof . . . .185

Compare this amended version with the 1897 version of section 1187, in which cessation of labor is joined with the occupancy and acceptance equivalents by "and" instead of "or."186 The 1911 amendment also made the filing of a notice of completion an equivalent to completion.187 It is possible that this change was a reaction to an interpretation of Code of Civil Procedure section 1187 by the supreme court that required a cessation of labor in conjunction with occupancy or use of the work of improvement.188

The meaning of the minor punctuation change in the 1911 version of the equivalents clause is particularly mysterious. There appears to be no reason to have a semicolon separating the occupation equivalent from the acceptance equivalent, while a comma separates the acceptance equivalent from the cessation equivalent.

d. 1919 amendment to the completion equivalents

Code of Civil Procedure section 1187 was next amended in 1919:

[I]n all cases, any of the following shall be deemed equivalent to a completion for all the purposes of this chapter; the occupation or use of a building, improvement or structure, by the owner, or his representative, accompanied by cessation from la-

184. Compare Ch. 141, 1897 Cal. Stat. at 204 with Ch. 137, § 3, 1887 Cal. Stat. at 155.
186. See supra note 181.
187. Ch. 681, § 4, 1911 Cal. Stat. at 1317. This was the case with all versions of the statute through 1951.
188. See Robison, 159 Cal. at 587-88, 114 P. at 987.
bor thereon; or the acceptance by the owner, or said agent, of said building, improvement or structure; or cessation from labor for thirty days . . . 189

The result of the 1919 amendment was that the equivalents to completion were clearly delineated in much the same form as they appear today in Civil Code section 3086. 190 An important distinction between the 1911 and 1919 amendments is that the 1919 version clearly required that occupation or use be accompanied by a cessation of labor. Most notably, cessation of labor was considered an equivalent to completion by itself, but was also required if occupancy was to be considered a completion equivalent. 191

e. amendments to the completion equivalents between 1929 and 1969

The mechanics' lien recording statute was amended several times between 1929 and 1969, but no significant changes were made to the completion equivalents clause. 192 Nonetheless, courts continued to misconstrue the equivalents clause. For example, the court in Baird v. Havas 193 stated that “occupation by the owner, plus cessation of labor, or acceptance plus cessation of labor for thirty days, shall constitute completion.” 194 Although it appears that occupancy required an accompanying cessation of labor, it is difficult to see how the Baird court could construe the language of section 1187 to require acceptance to be accompanied by a cessation of labor. 195

The equivalents clauses in the 1929196 and 1939197 versions of section 1187 are substantially the same as the 1919 version. 198

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190. See supra text accompanying note 172.
194. Id. at 523, 164 P.2d at 953.
195. It is assumed that the court was construing the most recent amendment to Code of Civil Procedure section 1187. See Ch. 1068, § 1, 1939 Cal. Stat. at 2994.
196. Ch. 870, § 1, 1929 Cal. Stat. at 1928.
197. Ch. 1068, § 1, 1939 Cal. Stat. at 2994.
198. See supra note 189 for the text of the 1919 version.
sion over the reading of the equivalents clause may account for the clear, unmistakable delineation of the completion equivalents in Civil Code section 3086.¹⁹⁹

2. Occupation or use

Civil Code section 3086 clearly states that occupancy or use of a work of improvement is only to be considered constructive completion if "accompanied by cessation of labor thereon."²⁰⁰ There was no such requirement in the original version of the equivalents clause in the 1887 amendment to Code of Civil Procedure section 1187.²⁰¹ The occupancy or use with cessation of labor requirement first appeared in the 1919 amendment to section 1187 of the Code of Civil Procedure²⁰² and appears to be the result of a rewording of some confusing language contained in the 1887,²⁰³ 1897,²⁰⁴ and 1911²⁰⁵ amendments to the statute.

Two different scenarios may explain the revisions to the equivalents clause that took place during the early amendments to the statute. One possibility is that the revisions were the result of sloppy drafting, in which case the legislature did not truly intend to require that occupancy or use be accompanied by a cessation of labor.²⁰⁶ If this was the case, the legislature, in deciding against making any substantive changes to the mechanics' lien statutes when transferring them to the Civil Code in 1971,²⁰⁷ unwittingly propagated the misdrafted statutes of their predecessors. The other possibility is that the cessation of labor language in the present version of section 3086 is a valid representation of original legislative intent.²⁰⁸ The statutory history of section 3086 makes the latter alternative appear less likely than the former.

An explanation for the evolution of the statute is that the legislature, in the process of attempting to clarify the unclear punctuation of prior

¹⁹⁹. See supra text accompanying note 67.
²⁰⁰. CAL. CIV. CODE § 3086(a).
²⁰¹. See supra note 179 and accompanying text. The semicolon separating "occupancy or use" from "cessation from labor" makes it difficult to interpret the statute as requiring occupancy or use to be accompanied by a cessation of labor. See supra text accompanying note 179.
²⁰². Ch. 146, § 1, 1919 Cal. Stat. at 190-91.
²⁰³. See supra text accompanying note 179.
²⁰⁴. See supra text accompanying note 181.
²⁰⁵. See supra text accompanying note 185.
²⁰⁶. Recall Chief Justice Murray's admonition about the early mechanics' lien statutes. See supra note 34.
²⁰⁷. See the historical note to Civil Code § 3082 (West 1993) and text accompanying supra note 124.
²⁰⁸. CAL. CIV. CODE § 3086.
statutes, inadvertently altered the substantive meaning of the statute. Without legislative history or judicial interpretation, it is conjectured that the conjoining of the cessation from labor equivalent and the occupation equivalent in the 1919 statute is the result of confused drafting in the rewording of the equivalents clause that took place between 1887 and 1919.209

The Arizona mechanics’ lien recording statutes, which are otherwise very similar to California’s,210 consider occupancy alone an equivalent to completion for purposes of the beginning of the limitation-on-actions period.211 Although the Arizona statute limits this completion equivalent to cases involving residential contracting,212 an Arizona Court of Appeals held that under Arizona Revised Statutes section 33-993(B)(2), the owner’s partial occupation of a commercial project—a resort hotel—was “completion” such that a material supplier’s lien recorded more than sixty days after the owner’s partial occupation was untimely.213

In any event, the requirement that a cessation of labor accompany occupancy does not mean that occupancy alone is not strong evidence of completion. The cessation of labor qualification is less relevant when only minor work is undone than when the owner occupies a work of improvement that is only partially completed.214 Finally, the cessation of labor equivalent should be interpreted in light of the general purpose of protecting both mechanics’ lien claimants and property owners.

209. One possible scenario is as follows: In the 1887 statute the occupancy equivalent applied only “in case of contracts,” but no such limitation was applied to the cessation from labor equivalent. See supra text accompanying note 179. In 1897 the legislature decided that occupancy or use and cessation from labor (as well as acceptance) should be equivalent to completion “in all cases.” See supra text accompanying note 181. Consequently, the semicolon separating the occupation or use equivalent and the cessation from labor equivalent was changed to a comma. See supra text accompanying note 181. It then became a simple matter for a legislature, 18 years later and far removed from the circumstances that led to the 1911 amendment, to construe the 1897 statute as requiring occupancy or use to be accompanied by a cessation from labor. Thus, when the 1919 legislature decided to completely revise the 1911 statute, see supra text accompanying note 185, and returned to the 1897 amendment for guidance, it inadvertently created the joint occupancy or use and cessation of labor requirement that survives today. See supra text accompanying note 189.


212. Id.; see also id. § 32-1101 to 02 (1990) (defining “residential contracting”).


214. See, e.g., Farnham v. California Safe Deposit & Trust Co., 8 Cal. App. 266, 96 P. 788 (1908) (holding that occupancy does not start running of period of limitations where labor only half performed).
3. Acceptance

The language and interpretation of the acceptance equivalent have not changed since it was first added to the Code of Civil Procedure in 1887. 215 Acceptance as an equivalent to actual completion will most likely arise only where an owner discharges a contractor or other claimant and undertakes to finish the partially completed project himself, 216 or where the owner abandons completion of the project. 217

It is well settled that the acceptance must be such that notice is given to all claimants that an acceptance has occurred, 218 and that the statute forbids secret acceptances between the owner and original contractor that defeat the claims of other claimants. 219

4. Cessation of labor

Like the occupancy or use equivalent 220 and the acceptance equivalent, 221 the cessation of labor equivalent has been included in the recording statutes since 1887. 222 The meaning of “cessation of labor” has not been litigated to the same extent as the definition of “completion.” 223 This is because it is clear that the cessation of labor must be “absolute” during the cessation period. 224 It is a question of fact whether there has been a cessation of labor for sixty days. 225

The main concern with the cessation of labor equivalent is that it is not used by owners “as a means of defrauding lien-holders.” 226 Thus, in Marble Lime Co. v. Lordsburg Hotel Co. 227 the supreme court held that a

215. See supra note 179 and accompanying text.
219. See Hammond Lumber, 202 Cal. at 611-12, 262 P. at 33-34; 44 CAL. JUR. 3D Mechanics’ Liens § 75 (1978). The potential for a claimant’s lack of awareness of the owner’s acceptance is addressed infra part IV.B.
220. CAL. CIV. CODE § 3086(a).
221. Id. § 3086(b).
222. See Ch. 137, § 3, 1887 Cal. Stat. at 155.
223. See supra part III.C.
226. Marble Lime Co. v. Lordsburg Hotel Co., 96 Cal. 332, 337, 31 P. 164, 166 (1892) (The cessation of labor equivalent “do[es] not mean a mere clandestine stopping of actual work . . . and then beginning it again without any indicia to the world that it had been stopped.”).
227. Id.
work stoppage of over thirty days would not begin the running of the period of limitations if there was "no pretense that [the claimant] knew or had any reasonable grounds for suspecting that [a painter] had let thirty days go by at any one time without doing some work."\[^{228}\]

There is one noteworthy drafting problem with the present cessation of labor completion equivalent. According to Civil Code section 3086(c), a cessation of labor for sixty days, or thirty days if the owner records a notice of cessation,\[^{229}\] "shall be deemed equivalent to a completion."\[^{230}\] Sections 3115(a) and 3116(a) declare that the original contractor and other claimants have ninety days from "completion" to record a claim of lien if a notice of cessation is not recorded.\[^{231}\] If a notice of cessation is recorded, sections 3115(b) and 3116(b) control, and the original contractor and other claimants must record a lien claim within sixty and thirty days, respectively, after the recording of the notice of cessation.\[^{232}\] Since sections 3115(b) and 3116(b) will always control if a notice of cessation is recorded, there is absolutely no reason for the 3086(c) cessation of labor equivalent to account for the recording of a notice of cessation.\[^{233}\]

IV. SUMMARY AND RECOMMENDATIONS

The foregoing analysis reveals three flaws in the drafting of the mechanics' lien recording statutes—flaws that result in varying degrees of ambiguity and potential for misinterpretation. First, the meaning of the term "actual completion" in the first sentence of Civil Code section 3086 is inherently ambiguous and subject to contradictory interpretations.\[^{234}\] Second, the occupancy or use completion equivalent as defined in section 3086(a) is the result of an uncertain statutory history and cannot be reconciled with analogous statutes.\[^{235}\] Finally, in certain circumstances, conflicting language in Civil Code sections 3115 and 3116 may

\[^{228}\] Id. at 338, 31 P. at 166. In Marble Lime the claimant was unaware of the cessation of labor because a painter "stopped at the building all the time.... [and did not] remove[ ] his painting material." The cessation of labor period is now 60 days. \textit{See} CAL. CIV. CODE § 3086(c). \textit{See infra} part IV.B for a discussion of the issue of a claimant's notice of the cessation of labor.

\[^{229}\] A notice of cessation cannot be recorded until there has been a cessation of labor for at least 30 days. \textit{See} CAL. CIV. CODE § 3092 (West 1993); \textit{supra} note 69 and accompanying text.

\[^{230}\] CAL. CIV. CODE § 3086(c).

\[^{231}\] \textit{Id.} §§ 3115(a), 3116(a).

\[^{232}\] \textit{Id.} §§ 3115(b), 3116(b).

\[^{233}\] Section 3086 is only reached by way of § 3115(a) or § 3116(a), neither of which applies if a cessation of labor is recorded. The superfluous language should be deleted at the time of the next revision of the mechanics' lien statutes. \textit{See infra} part IV.

\[^{234}\] \textit{See supra} part III.C.

\[^{235}\] \textit{See supra} part III.D.2.
operate to permanently preclude contractors or other claimants from re-
cording their claims of lien. As demonstrated below, each of these flaws can be resolved through minor revisions to the relevant statutory provisions.

A. "Substantial Completion" in the First Sentence of Civil Code
   Section 3086

There is little support for the proposition that the term "actual com-
pletion" in the first sentence of Civil Code section 3086237 is intended as
an alternative to the concept of substantial completion. Although the
court in Willamette Steam Mills Lumbering & Manufacturing Co. v. Los
Angeles College Co.238 seemed to hold that "actual" and "substantial"
were mutually exclusive,239 it is more likely that the use of the term "ac-
tual" is intended to be contrasted with the constructive completion
equivalents of subsections 3086(a)-(c).240

The trivial imperfections language in former Code of Civil Proce-
dure section 1187 is further support for the proposition that the legisla-
ture intended the period of limitations on the recording of mechanics’
lien claims to begin upon substantial completion of the work of improve-
ment.241 Although opponents of the substantial completion concept
often rely on Lewis v. Hopper, its dicta supports the idea that the removal
of the trivial imperfections language in 1929242 did not signal a change in
the substantive law.243

There is also affirmative support for the proposition that completion
in section 3086 should be explicitly defined as "substantial completion.”
Most persuasive is the fact that California law provides that the statute of
limitations on the filing of an action to recover damages due to patent or
latent construction defects begins to run upon substantial completion of
an improvement to real property.244

236. See supra part III.B.2.
237. CAL. CIV. CODE § 3086 (West 1993).
238. 94 Cal. 229, 29 P. 629 (1892).
239. Id. at 237-38, 29 P. at 632; see supra notes 137-38 and accompanying text.
240. See BLACK'S LAW DICTIONARY, supra note 64, at 34 (defining “actual” as
   "[s]omething real, in opposition to constructive” (emphasis added)).
241. See supra part III.C.1.
244. See CAL. CIV. PROC. CODE §§ 337.1(a), 337.15(a) (West 1982). These sections are, as
   opposed to Civil Code §§ 3115 and 3116, statutes of limitation in the technical sense. See
   supra note 18. Nonetheless, there is no reason to believe that this distinction limits the trans-
ferability of the concept of substantial completion to § 3086 for purposes of defining comple-
tion as used in §§ 3115 and 3116.
Code of Civil Procedure section 337.1, enacted in 1967, requires that an action for damages due to patent defects in an improvement to real property be filed within four years from substantial completion of the improvement. Code of Civil Procedure section 337.15, enacted in 1971, requires that an action for damages due to latent defects be filed within ten years from substantial completion of the improvement. The use of the substantial completion language in these two statutes appears to have avoided the problems that have plagued the mechanics' lien recording statutes as a result of the uncertainty surrounding the meaning of the terms "completion" or "actual completion."

Furthermore, it is not uncommon for parties to construction contracts to define completion as substantial completion. For instance, in construction contracts that incorporate the American Institute of Architects (AIA) form, which sets forth certain uniform standards, "substantial completion" for breach of contract and mechanics' lien claim issues is defined as "the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use." Finally, it should be noted that parties to construction contracts—perhaps in response to the confusion surrounding completion as defined by Civil Code section 3086—often establish their own definition of completion for other purposes, such as establishing the point at which liquidated damages begin to accrue.

Therefore, to avoid any further confusion over the intended meaning of the first sentence of Civil Code section 3086, the legislature should redraft the sentence to read: "'Completion' means, in the case of any work of improvement other than a public work, substantial completion

246. CAL. CIV. PROC. CODE § 337.1(a).
248. CAL. CIV. PROC. CODE § 337.15(a).
249. There are less than 75 reported cases in which § 337.1 or § 337.15 was litigated. Search of LEXIS, States library, Cal file (Oct. 20, 1993). Admittedly the mechanics' lien recording statutes have a 100-year head start on the construction defect statutes. On the other hand, this head start may be evened out by the exponential increase in litigation in general over the last 20 years.
250. AMERICAN INST. OF ARCHITECTS, GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION ¶ 9.8.1 (14th ed. 1987) (Document A201). It should be noted that any such contractual definition of completion agreed to between an owner and original contractor is not necessarily binding on other claimants; they may still be required to refer to the statutory definition of completion.
251. See O'Leary, supra note 31, at 296. The Civil Code permits parties to waive code provisions, including those applying to mechanics' liens, unless such waiver would be against public policy. CAL. CIV. CODE § 3268 (West 1993).
of the work of improvement." 252 This simple—but definitely not trivial—amendment would finally make explicit what the legislature has most certainly always intended.

B. Cessation of Labor Requirement in Civil Code Section 3086(a)

The requirement in Civil Code section 3086(a) that occupancy or use be accompanied by a cessation of labor is difficult to reconcile with statutory history 253 or recent legislation. As noted, the Arizona mechanics' lien recording statute does not require occupancy or use, as a constructive equivalent to completion, to be accompanied by a cessation of labor. 254 Even more persuasive is the fact that the California Legislature has itself deemed occupation or use, without an accompanying cessation of labor, to be sufficient to begin the running of the statute of limitations on the filing of an action to recover damages due to latent construction defects. 255

Legislative history and statutory analogy notwithstanding, the lien claimant may be better protected by including the cessation of labor requirement with the occupancy or use completion equivalent. If the cessation of labor requirement is included, the claimant can determine if labor is continuing on a project through simple observation of the worksite. Since occupancy and use are neither publicly recorded nor plainly visible, if the cessation of labor requirement is not included, the claimant—especially one that has completed his or her contribution to the project—may not have reason to know that the owner or his agent has begun to occupy or use the work of improvement. In such cases the period of limitations on a claimant's lien recording will begin to run without notice to the claimant.

252. There is no need to further define completion as "actual" completion to distinguish the constructive completion equivalents. The distinction between the proposed "substantial completion" concept in the first sentence of § 3086 and the constructive aspect of the completion equivalents will be sufficiently clear.

253. See supra part III.D.

254. See supra notes 210-13 and accompanying text.

If it is true that the mechanics' lien statutes are designed primarily for the protection of the claimant, then the present Civil Code section 3086(a) requirement that a cessation of labor accompany the occupancy or use requirement is completely appropriate. However, it must be noted that the rationale for requiring a cessation of labor with the occupancy or use equivalent is equally applicable to the "acceptance" equivalent stated in section 3086(b). Yet, the legislature chose to deem acceptance by the owner or his agent to be equivalent to completion without any requirement of a cessation of labor. Therefore, in order to maintain consistency among the completion equivalents stated in Civil Code section 3086, the acceptance equivalent should be revised to require an accompanying cessation of labor.

C. Potential Conflict Between the Limitations on Premature and Final Recording

Under certain circumstances Civil Code sections 3115 and 3116 can operate so that the period of limitations on the recording of a lien will expire before the original contractor or other claimant is permitted to actually record a claim of lien. It goes without saying that such a result is inconsistent with the claimant-oriented policies underlying the mechanics' lien.

In the case of the original contractor, it is entirely possible for a contractor's contract to remain partially executory for the ninety-day limitations period following substantial completion of the work of improvement as a whole. Nonetheless, such a result—although conceivable under the language of section 3115—is unlikely to occur in practice. If a work of improvement is held to be substantially complete, a reasonable court will apply the doctrine of substantial performance and hold that the contract between the owner and original contractor is likewise substantially complete.

256. See supra notes 44-46 and accompanying text.
257. The claimant is probably less likely to be aware of an acceptance by the owner than of the owner's occupancy or use.
258. See CAL. CIV. CODE § 3086(b).
259. If the legislature decides, based on the analysis of the statutory history of the completion equivalents, see supra part III.D, that occupancy or use need not be accompanied by a cessation of labor, the acceptance equivalent should not be revised.
260. This discussion assumes that the concept of substantial completion is read into the first sentence of Civil Code § 3086 as recommended supra part IV.A.
261. See supra part III.B.2.
262. See supra notes 44-46 and accompanying text.
The conflict between the premature and final recording provisions in Civil Code section 3116 may also lead to situations where the work of improvement is substantially completed prior to the time that the claimant “has ceased furnishing labor, services, equipment, or materials.” Nonetheless, as is the case with the original contractor under section 3115, such a result is unlikely. If additional labor or material is required to be provided to a substantially complete work of improvement—upon which the ninety-day period of limitations has begun to run—the subcontractor or material supplier can avoid forfeiture of the right to record a lien by recording a claim of lien for the amount of materials or labor provided up until that time.

Notwithstanding these observations, in order to avoid even the potential for the harsh, unintended results which the language of Civil Code sections 3115 and 3116 invites, the aforementioned statutes should be revised to account for situations where substantial completion of a work of improvement occurs before the original contractor “completes his contract” or before the other claimant “has ceased furnishing labor, services, equipment, or materials.” The amended statutes would read as follows:

§ 3115. Original contractor; recordation of claim; time

Each original contractor, in order to enforce a lien, must record his claim of lien after he completes his contract and before the expiration of (a) 90 days after either the completion of the work of improvement or the completion of his contract, whichever occurs later, if no notice of completion or notice of cessation has been recorded, or (b) 60 days after recordation of a notice of completion or notice of cessation.

§ 3116. Other claimants; recordation of claim; time

Each claimant other than an original contractor, in order to enforce a lien, must record his claim of lien after he has ceased furnishing labor, services, equipment, or materials, and before the expiration of (a) 90 days after either the completion of his contract, whichever occurs later, if no notice of completion or notice of cessation has been recorded, or (b) 60 days after recordation of a notice of completion or notice of cessation.


265. If the more imperative revisions recommended supra part IV.A-B are implemented, it should be a minor task for the legislature to include the proposed revisions to §§ 3115 and 3116 as part of the same bill.


267. Id. § 3116.

268. The phrase “as defined in Section 3106” that follows the term “work of improvement” in § 3115(a) should also be deleted. This language complicates the reading of the statute and is unnecessary. The phrase does not appear in § 3116(a).

269. This word is added for consistency with the language of § 3115(a). See supra note 112.
tion of the work of improvement or after he has ceased furnishing labor, services, equipment, or materials, whichever occurs later, if no notice of completion or cessation has been recorded, or (b) 30 days after recordation of a notice of completion or notice of cessation. 270

V. CONCLUSION

In the mid-nineteenth century, before the enactment of the first mechanics' lien law, a dispute over real property might be resolved in a shootout on main street. 271 Today, the law itself is all too often the cause of needless courtroom showdowns: the wild-west gunslinger replaced by the high-priced construction lawyer. The current California Civil Code statutes pertaining to the recording of mechanics' lien claims embody a legacy of legislative inattentiveness, judicial misinterpretation, and practical confusion. The California Constitution mandates that the legislature provide for the "speedy and efficient enforcement" of mechanics' liens. 272 The extent of mechanics' lien litigation since the late nineteenth century suggests that, at least with regard to the recording statutes, the legislature has failed to carry out its constitutional mandate.

Inherent ambiguity in the language of the recording statutes has been exacerbated by inconsistent judicial interpretation. Some courts made valiant efforts to interpret the statutes in light of original policies underlying the statutes. But, as the years went by, courts became increasingly less willing to wade into the morass that is the legislative and statutory history of the statutes. The ambiguous and poorly defined language in the current recording statutes forces today's mechanics' lien litigants to choose between "reinventing the wheel" and relying on popular case authority that only long ago—or, in some cases, never—had any relevance to typical circumstances. Continued reliance on inapposite cases such as Lewis v. Hopper 273 is representative of the uncertain state of the mechanics' lien recording law.

Implementation of the recommendations contained in this Comment would save litigants, courts, and laypersons the need to continually reevaluate 150 years of statutory and judicial disarray. It is only proper that all those involved in the contribution of labor, materials, and money

270. The proposed additional language in both statutes is in italics. It is also recommended that existing male-oriented language in §§ 3115, 3116, and 3086 be gender-neutralized.

271. See supra note 2 and accompanying text.

272. Cal. Const. art. XIV, § 3.

to the development of property in California are afforded the legal protection the state constitution mandates.

Craig Penner Bronstein*

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