

# Index

## **AAS DECISION**

- Rollback of, § 5:36
- Tort remedies, economic loss caused by construction defects, § 5:35

## **ABANDONMENT**

- Contracts, § 1:49
- Mechanics liens, stop payment notices and payment bonds, § 6:19
- Public contracts, extra work, § 7:77

## **ACCEPTANCE**

- Contracts, § 1:13

## **ACCORD AND SATISFACTION**

- Generally, § 9:39
- Contracts, waiver, § 1:45

## **ADDITIONAL INSURED**

- Insurance, this index

## **ADHESION CONTRACTS**

- Arbitration, § 3:13

## **ADJACENT PROPERTY**

- Lateral support, § 9:20

## **ADMINISTRATIVE RULES**

- Generally, § 9:56

## **ADVERSE POSSESSION**

- Generally, § 9:49

## **ADVERTISING**

- False Advertising and False Claims, this index
- Insurance, § 5:204
- Truth-in-lending, § 9:18

## **AFFIRMATIVE ACTION**

- Public contracts, minority and women business enterprises, § 7:47

## **AFFIRMATIVE DEFENSES**

- Insurance, duty to defend, § 5:209

## **AGENTS**

- Defects in construction, liability for fraud of agent, § 5:11
- Unauthorized agents, waiver of contract, § 1:44

## **ALLOCATIONS**

- Defects in construction, equitable indemnity and comparative fault, § 5:157
- Insurance, this index

## **ALLOWANCES**

- Prime contracts, § 2:11

## **ALTERNATES**

- Subcontracts, § 2:111

## **AMBIGUOUS AWARDS**

- Arbitration, § 3:55

## **ANNUAL PERCENTAGE RATE**

- Truth-in-lending, § 9:16

## **ANTICIPATORY BREACH**

- Contracts, § 1:67

## **ANTI-SLAPP MOTIONS**

- Generally, § 9:44

## **APPEALS**

- Arbitration, § 3:67

## **APPORTIONMENT**

- Contracts, liquidated damages, § 1:90
- Public contracts, liquidated damages, § 7:91, 7:92

## **APPRECIABLE AND ACTUAL HARM**

- Defects in construction, statutes of limitation and repose, § 5:126

## **ARBITRATION**

- Generally, § 3:1 to 3:88
- Adhesion contracts, § 3:13
- Advantages, generally, § 3:69 to 3:84

## ARBITRATION—Cont'd

- Agreement for arbitration or submission
  - generally, § 3:3 to 3:25
  - adhesion contracts, § 3:13
  - contract, agreement in, § 3:4
  - covenants, conditions and restrictions, agreement in, § 3:5
  - enforcement of arbitration agreement, below
  - home improvement contracts, § 2:63
  - illegal contracts, § 3:17
  - judicial reference agreement as unconscionable, § 3:15
  - limitation of actions, § 3:19
  - oral arbitration agreements, § 3:18
  - prime contracts, § 2:19, 2:44
  - public agency arbitration, § 3:8
  - public policy, § 3:16
  - real estate contracts, § 3:9
  - rescission of contract, § 3:12
  - residential construction contract, agreement in, § 3:6
  - self executing agreements, § 3:10
  - subcontracts, § 2:84
  - termination of contract, § 3:11
  - unconscionable arbitration agreement, § 3:14, 3:15
  - venue, § 3:7
- Ambiguous awards, § 3:55
- Appeal of award, § 3:67
- Arbitrators
  - generally, § 3:30 to 3:39
  - bias
    - generally, § 3:35 to 3:37
    - impression of bias, § 3:36
    - presumption of bias, § 3:37
  - disclosures by arbitrator, § 3:32
  - expertise, § 3:69
  - homeowner/developer proceedings, § 3:39
  - impression of bias, § 3:36
  - mediator/arbitrator, § 3:34
  - minimum levels of integrity, § 3:38
  - partisan and neutral arbitrator, § 3:30

## ARBITRATION—Cont'd

- Arbitrators—Cont'd
  - presumption of bias, § 3:37
  - replacement, § 3:31
  - violation of agreement by arbitrator, § 3:33
- Attorneys fees
  - generally, § 3:61 to 3:63
  - enforcement of award, fees incurred in, § 3:63
  - error of law, § 3:62
- Awards
  - generally, § 3:53 to 3:68
  - ambiguous awards, § 3:55
  - appeal of award, § 3:67
  - attorneys' fees, above
  - change of award, § 3:65
  - collateral estoppel, § 3:59
  - enforcement of award, § 3:60, 3:63
  - error of law, § 3:56
  - general partner bound by award, § 3:66
  - manifest disregard of law, § 3:57
  - punitive damages, § 3:64, 3:84
  - time for award, § 3:53
  - utterly irrational, § 3:58
  - vacating of award, § 3:68
- Bias
  - generally, § 3:71
  - arbitrators, above
- Change of award, § 3:65
- Choice of law clause, enforcement of arbitration agreement, § 3:24
- Class actions, § 3:52
- Collateral estoppel, awards, § 3:59
- Conduct of hearings, § 3:42
- Consolidation, § 3:80
- Contracts. Agreement for arbitration or submission, above
- Control of arbitration proceedings, § 3:43
- Cost, § 3:74
- Covenants, conditions and restrictions, arbitration agreement in, § 3:5
- Determination of
  - arbitrability, § 3:25
  - issues to be arbitrated, § 3:40

**ARBITRATION—Cont'd**

- Disadvantages, generally, § 3:69 to 3:84
- Disclosures by arbitrator, § 3:32
- Discovery, § 3:83
- Due process, hearings, § 3:44
- Enforcement of arbitration agreement
  - generally, § 3:22 to 3:25
  - choice of law clause, § 3:24
  - determination of arbitrability, § 3:25
  - Federal Arbitration Act, § 3:23
  - waiver of right to compel arbitration, § 3:20
- Enforcement of award
  - generally, § 3:60
  - attorneys' fees, § 3:63
- Equitable remedies. Provisional and equitable remedies, below
- Evidence, § 3:37, 3:46, 3:70
- Expertise, arbitrators, § 3:69
- Finality of decision, § 3:75
- Formality, § 3:73
- General partner bound by award, § 3:66
- Hearings
  - generally, § 3:40 to 3:47
  - conduct of hearings, § 3:42
  - control of arbitration proceedings, § 3:43
  - determination of issues to be arbitrated, § 3:40
  - due process, § 3:44
  - evidence, § 3:46
  - out-of-state counsel, § 3:47
  - summary judgment, § 3:45
  - waiver, § 3:41
- Home improvement contracts, § 2:63
- Homeowner/developer proceedings, arbitrators, § 3:39
- Illegal contracts, § 3:17
- Immunity
  - generally, § 3:76
  - arbitrators and arbitration associations, § 3:2
- Impression of bias, arbitrators, § 3:36
- Judicial reference agreement as unconscionable, § 3:15

**ARBITRATION—Cont'd**

- Jury trial, § 3:82
- Knowledge of arbitrator of law, § 3:21
- Limitation of actions, agreement for arbitration or submission, § 3:19
- Manifest disregard of law, awards, § 3:57
- Mechanics Liens, Stop Payment Notices and Payment Bonds, this index
- Mediator/arbitrator, § 3:34
- Minimum levels of integrity, arbitrators, § 3:38
- Multiple parties, § 3:77
- Oral arbitration agreements, § 3:18
- Out-of-state counsel, hearings, § 3:47
- Partisan and neutral arbitrator, § 3:30
- Presumption of bias, arbitrators, § 3:37
- Provisional and equitable remedies
  - generally, § 3:48 to 3:52, 3:81
  - class actions, § 3:52
  - mechanics' liens, § 3:48
  - receiver, appointment of, § 3:51
- Public agency arbitration, § 3:8
- Public Contracts, this index
- Public policy, agreement for arbitration or submission, § 3:16
- Punitive damages, § 3:64, 3:84
- Real estate contracts, § 3:9
- Receiver, appointment of, § 3:51
- Replacement of arbitrators, § 3:31
- Rescission of contract, § 3:12
- Residential construction contract, arbitration agreement in, § 3:6
- Self executing agreements, § 3:10
- Settlement of disputes by arbitration, law in favor of, § 3:1
- Speed of proceedings, § 3:72
- Stays
  - generally, § 3:26 to 3:29
  - arbitration, stay to avoid conflicting awards, § 3:26
  - Federal Arbitration Act, § 3:28
  - litigation, stay to avoid conflicting awards, § 3:27
  - tolling of commencement of arbitration, § 3:29

**ARBITRATION—Cont'd**

- Subcontractors, § 3:78
- Summary judgment, § 3:45
- Sureties, § 3:79
- Technical evidence, § 3:70
- Termination of contract, § 3:11
- Time for award, § 3:53
- Tolling of commencement of arbitration, § 3:29
- Unconscionable arbitration agreement, § 3:14, 3:15
- Utterly irrational, awards, § 3:58
- Vacating of award, § 3:68
- Venue, agreement for arbitration or submission, § 3:7
- Voluntary mediation, § 3:89
- Waiver
  - hearings, § 3:41
  - right to compel arbitration, § 3:20

**ARCHITECTS**

- Licenses of Contractors, this index
- Public contracts, § 7:7

**ASBESTOS**

- Generally, § 9:40
- Abatement work, written contract requirement, § 2:60
- Attorneys' fees, § 9:41
- Insurance, § 5:197

**ASSESSMENTS**

- Contracts, this index

**ASSIGNMENTS**

- Prime contracts, § 2:31

**ASSUMPTION OF LIABILITY**

- Insurance, § 5:188

**ASSUMPTION OF RISK**

- Defects in construction, § 5:31

**ATTORNEYS**

- Attorneys' fees, this index
- Disqualification, § 9:51

**ATTORNEYS' FEES**

- Arbitration, this index
- Asbestos, § 9:41
- Assigned indemnity agreement, good faith settlement, § 5:261

**ATTORNEYS' FEES—Cont'd**

- Contracts, this index
- Defects in construction, Magnuson-Moss Warranty Act, § 5:48
- Mechanics Liens, Stop Payment Notices and Payment Bonds, this index
- Public contracts
  - generally, § 7:116
  - payment bonds, subcontractors and suppliers, § 8:14

**ATTRACTIVE NUISANCE**

- Defects in construction, § 5:82

**AWARDS**

- Arbitration, this index

**BACK CHARGES**

- Contracts, subcontractor, § 2:104

**BACK PAY**

- Prevailing wages, § 9:36, 9:38

**BANKRUPTCY**

- Generally, § 9:26 to 9:29, 9:48
- Construction defect claims, discharge of, § 9:29
- Licenses of contractors, § 4:12
- Mechanics Liens, Stop Payment Notices and Payment Bonds, this index
- Preferential payments, § 9:26
- Recoupment of funds paid to material suppliers, § 9:27
- Subcontractors, payments to, § 9:28

**BENEFIT OF BARGAIN**

- Contracts, damages, § 1:71

**BIAS**

- Arbitration, this index

**BIDS**

- Contracts, this index

**BONDING CAPACITY**

- Defects in construction, liability of construction lender for impairment, § 5:87

**BONDS**

- Contracts, this index
- Licenses of Contractors, this index

## INDEX

### **BONDS—Cont'd**

- Mechanics Liens, Stop Payment Notices and Payment Bonds, this index
- Performance Bonds, this index
- Public Contracts, this index

### **BRIBERY**

- Public contracts, § 7:36

### **BUILDING CODE VIOLATIONS**

- Defects in construction, negligence per se, § 5:5

### **BUILDING INSPECTORS**

- Defects in construction, § 5:84
- Licenses of contractors, § 4:23

### **BUILDING OFFICIALS**

- Prime contracts, § 2:36

### **BUILDING STANDARDS**

- Defects in construction, § 5:58

### **BURDEN OF PROOF**

- Licenses of contractors, § 4:49

### **BUSINESS EXCLUSION**

- Insurance, § 5:187

### **BUSINESS LICENSE TAXES**

- Corporate opportunities, § 9:24
- Discrimination, § 9:23

### **BUSTED BIDS**

- Contracts, this index

### **BYSTANDERS**

- Defects in construction, strict liability, § 5:26

### **CATALOGS**

- Public contracts, misrepresentations, False Claims Act, § 7:110

### **CERCLA**

- Defects in construction, preemption of California statute of limitation, § 5:138

### **CERTAINTY**

- Contracts, § 1:12

### **CERTIFICATE OF MERIT**

- Defects in construction, design professionals, § 5:100, 5:101

### **CERTIFICATION OF PERFORMANCE**

- Design professionals, § 9:57

### **CHANGE**

- Modification or Change, this index

### **CHARTER CITIES**

- Public contracts, § 7:34

### **CHOICE OF LAW**

- Arbitration agreement, enforcement of, § 3:24

### **CITATIONS**

- Licenses of contractors, § 4:38

### **CLASS ACTIONS**

- Arbitration, § 3:52
- Defects in construction, § 5:2, 5:18
- Right to Repair Act, § 5:2

### **CLEANUP**

- Prime contracts, § 2:17

### **CLEAN WATER ACT**

- Generally, § 9:42

### **CLERICAL ERRORS**

- Public contracts, subcontractors listing law, § 7:69

### **CLOUDS ON TITLE**

- Mechanics liens, stop payment notices and payment bonds, § 6:31

### **COLLAPSE COVERAGE**

- Property insurance, § 5:234

### **COLLATERAL ESTOPPEL**

- Arbitration awards, § 3:59

### **COLLATERAL SOURCE RULE**

- Contracts, damages, § 1:76
- Defects in construction, § 5:20

### **COMMUNITY PROPERTY**

- Contracts, § 1:77

### **COMPARATIVE FAULT**

- Defects in Construction, this index

**COMPETITIVE BIDDING**

Public Contracts, this index

**COMPLETION**

Prime contracts, § 2:13

**CONCEALMENT**

Generally, § 9:46

**CONDEMNATION**

Generally, § 9:47

**CONSENT OR APPROVAL**

Contracts, this index

**CONSIDERATION**

Contracts, this index

**CONSOLIDATION**

Arbitration, § 3:80

**CONSTITUTIONAL LAW**

Due Process, this index

Equal protection, minority and  
women business enterprises,  
§ 7:41 to 7:44

Mechanics liens, stop payment  
notices and payment bonds,  
§ 6:4, 6:6

Violations, § 9:52

**CONSTRUCTION AND  
INTERPRETATION**

Contracts, this index

Insurance, this index

Public contracts, § 7:50

**CONSTRUCTION LENDERS**

Defects in Construction, this index

Prime contracts, cancellation by  
owner if construction loan falls  
through, § 2:26

Stop payment notices, § 6:122

Subcontracts, construction loan pay-  
ments to subcontractor, § 2:89

**CONSTRUCTION MANAGERS**

Defects in construction, duty to  
architect, § 5:88

Licenses of Contractors, this index

**CONTINUED PERFORMANCE**

Prime contracts, § 2:25

**CONTINUOUS INJURY TRIGGER**

Insurance, progressive loss, § 5:196

**CONTRACTOR'S LICENSE**

Subcontracts, § 2:77

**CONTRACTS**

Generally, § 1:1 to 1:115, 2:1 to  
2:113

Abandonment of contract, § 1:49

Acceptance, § 1:13

Accord and satisfaction clause,  
waiver, § 1:45

Allowances, prime contracts, § 2:11

Alternates, subcontracts, § 2:111

Amount received, payment of,  
§ 1:107

Anticipatory breach, § 1:67

Apportionment, liquidated damages,  
§ 1:90

Approval. Consent or approval,  
below

Arbitration, this index

Asbestos abatement work, written  
contract requirement, § 2:60

Assessments

prime contracts, § 2:18

subcontracts, § 2:88

Assignment prohibited, prime  
contracts, § 2:31

Attorneys' fees

generally, § 1:29

prime contracts, § 2:16

subcontracts, § 2:74

Back charges against subcontractor,  
§ 2:104

Benefit of bargain, damages, § 1:71

Bids

busted bids, below

irresponsible bidder, public  
contracts, § 7:22

material suppliers, § 1:52

Public Contracts, this index

Bonds

prime contracts, below

subcontracts, right to demand  
bond, § 2:99

Breach of contract, § 1:62



## INDEX

### CONTRACTS—Cont'd

- Building officials, prime contracts, § 2:36
- Busted bids
  - consideration, § 1:50
  - mutual assent, sub bids, § 1:6
- Cancellation by owner if construction loan falls through, prime contracts, § 2:26
- Certainty, § 1:12
- Cleanup, prime contracts, § 2:17
- Collateral source rule, damages, § 1:76
- Commencement of work,
  - subcontracts, § 2:68
- Community property, § 1:77
- Completion, prime contracts, § 2:13
- Conduct, waiver by, § 1:43
- Conflict between contract documents, prime contracts, § 2:22
- Consent or approval
  - busted sub bids, mutual assent, § 1:6
  - financial arrangements, prime contracts, § 2:24
  - payments, subcontracts, § 2:98
- Consideration
  - generally, § 1:16
  - adequacy and busted bids, § 1:50
  - modification of contract, § 1:46
- Construction and interpretation
  - generally, § 1:19
  - custom, § 1:22
  - exculpatory clauses, below forfeiture, avoidance of, § 1:21
  - indemnity clauses, § 1:98
  - particular provisions, control by, § 1:23
  - party who wrote contract,
    - construction against, § 1:20
  - performance specifications, § 1:25
  - written vs. printed provisions, § 1:24
- Continued performance, prime contracts, § 2:25
- Contractor's license, subcontracts, § 2:77
- Cost of correction or cost of completion, damages, § 1:73

### CONTRACTS—Cont'd

- Cost of repair vs. diminution in value, damages, § 1:74
- Counter offers, § 1:13
- Custom, construction and interpretation, § 1:22
- Damages
  - generally, § 1:70 to 1:79
  - benefit of bargain, § 1:71
  - collateral source rule, § 1:76
  - cost of correction or cost of completion, § 1:73
  - cost of repair vs. diminution in value, § 1:74
  - delay damages, § 1:30, 1:86, 1:91, 1:93
  - emotional distress, § 1:75
  - general damages vs. special damages, § 1:78
  - home office overhead, § 1:92
  - incorporation by reference, pleading, § 1:65
  - interest as damages, § 1:79
  - liquidated damages, below market value damages, § 1:72
  - restitution vs. damages for breach of contract, § 1:70
- Damage to project, prime contracts, § 2:14
- Default
  - generally, § 1:62 to 1:64
  - anticipatory breach, § 1:67
  - breach of contract, § 1:62
  - contractor, default by, § 1:63
  - owner, default by, § 1:64
  - subcontracts, § 2:82
  - waiver, § 1:66
- Delays
  - damages, § 1:30, 1:86, 1:91, 1:93
  - prime contracts, § 2:12
  - subcontracts, below
- Description of work
  - prime contracts, § 2:4
  - subcontracts, § 2:64
- Design professional as indemnitor, § 1:100
- Destruction of project or premises
  - generally, § 1:59

**CONTRACTS—Cont'd**

- Destruction of project or premises
  - Cont'd
  - impossibility, § 1:59
  - subcontracts, § 2:71
- Disaster repair, home solicitation contracts, § 2:55
- Disputes, prime contracts, § 2:25
- Dump truck payments, § 1:113
- Early completion bonus, prime contracts, § 2:43
- Eichleay formula, § 1:92
- Ejection of contractor from job, § 1:85
- Ejection of subcontractor from job, § 2:107
- Electronic transactions, § 1:15
- Emotional distress, damages, § 1:75
- Estimates, § 1:53
- Exculpatory clauses
  - generally, § 1:26
  - indemnity clauses, distinguished, § 1:27
- Extra work
  - generally, § 1:40
  - prime contracts, § 2:10, 2:23
  - subcontracts, § 2:70, 2:95, 2:100
- Federal Truth in Lending Act, § 2:48
- Financing, contract not conditioned on, prime contracts, § 2:28
- Flow-down clause, subcontracts, § 2:106
- Forfeiture, avoidance of, § 1:21
- Fraud and mistake
  - generally, § 1:37 to 1:39
  - mutual mistake, § 1:39
  - unilateral mistake, § 1:38
- Guarantees
  - plans and specifications, guarantee by contractor, § 1:81
  - subcontracts, § 2:83
- Home improvement contracts
  - generally, § 2:52 et seq.
  - changes to contracts, § 2:56
  - checklist for homeowners, § 2:58
  - criticism of statutory requirements, § 2:59
  - insurance checklist, § 2:57

**CONTRACTS—Cont'd**

- Home improvement contracts
  - Cont'd
  - special arbitration requirements, § 2:63
- Home office overhead, damages, § 1:92
- Home solicitation contracts
  - generally, § 2:61
  - disaster repair, § 2:55
- Illegal Contracts, this index
- Implied covenants, § 1:82, 1:84
- Impossibility
  - generally, § 1:58
  - destruction of project, § 1:59
  - temporary impossibility, § 1:61
- Incorporation by reference, pleading damages by, § 2:106
- Indemnity
  - generally, § 1:97 to 1:103
  - design professional as indemnitor, § 1:100
  - exculpatory clauses, distinguished, § 1:27
  - insurance clause, § 1:105
  - interpretation of indemnity clauses, § 1:98
  - prime contracts, § 2:42
  - public contracts, design professionals, § 7:8
  - statutes, § 1:99, 1:104
  - subcontracts, § 2:79, 2:87
  - third-party beneficiary or assignee, indemnitee as, § 1:103
  - type II indemnity clause, § 1:101
  - type III indemnity clause, § 1:102
- Independent investigation, prime contracts, § 2:39
- Individual responsibility, prime contracts, § 2:34
- Insolvency
  - prime contracts, § 2:32
  - subcontracts, § 2:75
- Insurance
  - generally, § 1:105
  - home improvement contracts, § 2:57
  - indemnity, § 1:105



**CONTRACTS—Cont'd**

Insurance—Cont'd  
     prime contracts, § 2:14  
     single-family dwellings, § 2:51  
     subcontracts, § 2:80  
 Interest as damages, § 1:79  
 Labor and materials  
     prime contracts, § 2:8  
     subcontracts, § 2:67  
 Landscape architects, detailed written  
     contract requirement, § 2:62  
 Late payments, prime contracts,  
     § 2:46  
 Limitations, prime contracts, § 2:41  
 Liquidated damages  
     generally, § 1:88 to 1:90  
     apportionment, § 1:90  
     penalties vs. liquidated damages,  
     § 1:89  
 Lost profits, § 1:115  
 Market value damages, § 1:72  
 Material supplier, bid by, § 1:52  
 Mechanics' lien law, notice to owner  
     describing, § 2:50  
 Mechanics' lien releases  
     prime contracts, § 2:35  
     subcontracts, § 2:91  
 Meeting of the minds, § 1:11  
 Mistake. Fraud and mistake, above  
 Modification of contract  
     generally, § 1:46 to 1:48  
     abandonment, § 1:49  
     consideration, § 1:46  
     home improvement contracts,  
     § 2:56  
     oral modification, § 1:47  
     written modification, § 1:48  
 Mutual assent  
     generally, § 1:5  
     busted sub bids, enforcement of,  
     § 1:6  
     offer and acceptance, § 1:13  
     promissory estoppel, § 1:6  
 Mutuality, § 1:10  
 Mutual mistake, § 1:39  
 Negligence vs. unjust enrichment,  
     § 1:95

**CONTRACTS—Cont'd**

    “No damages for delay” clauses,  
     § 1:30, 1:93  
 Notices  
     prime contracts, § 2:20, 2:21  
     subcontracts, § 2:85  
 Occupancy, prime contracts, § 2:13  
 Offers, § 1:13  
 Oral contracts  
     generally, § 1:4  
     arbitration agreements, § 3:18  
     licenses of contractors, construc-  
     tion of residence, § 4:58  
     modification of contract, § 1:47  
     public contracts, § 7:27  
 OSHA compliance, subcontracts,  
     § 2:112  
 Owner's obligations, generally,  
     § 1:82 et seq.  
 Parol evidence rule, § 1:31 to 1:33  
 Particular provisions, control by,  
     § 1:23  
 Part performance, § 1:57  
 Party who wrote contract, construc-  
     tion against, § 1:20  
 Pass-through claims, § 1:83, 2:73  
 Pay-if-Paid Clauses, this index  
 Payments  
     prime contracts, below  
     subcontracts, below  
     waiver, § 1:42  
 Pay-when-paid clause, § 1:35, 2:97  
 Penalties vs. liquidated damages,  
     § 1:89  
 Performance and breach, § 1:54 et  
     seq.  
 Performance specifications, § 1:25  
 Permits, subcontracts, § 2:78, 2:103  
 Personal liability, § 1:34  
 Preamble, prime contracts, § 2:3  
 Prime contracts  
     generally, § 2:3 to 2:46  
     allowances, § 2:11  
     approval of financial arrangements,  
     § 2:24  
     arbitration, § 2:19, 2:44  
     assignment prohibited, § 2:31  
     attorneys' fees, § 2:16

## CONTRACTS—Cont'd

### Prime contracts—Cont'd

- basic prime contracts, generally, § 2:3 to 2:21
- bonds
  - payment, § 2:45
  - right to demand, § 2:33
- building officials, requirements of, § 2:36
- cancellation by owner if construction loan falls through, § 2:26
- cleanup, § 2:17
- completion and occupancy, § 2:13
- conflict between contract documents, § 2:22
- contract, plans and specifications, § 2:9
- damage to project and insurance, § 2:14
- delay, § 2:12
- description of work, § 2:4
- disputes and continued performance, § 2:25
- early completion bonus, § 2:43
- extra work, § 2:10, 2:23
- financing, contract not conditioned on, § 2:28
- indemnity, § 2:42
- independent investigation, § 2:39
- individual responsibility, § 2:34
- insolvency, § 2:32
- labor and materials, § 2:8
- late payments, § 2:46
- limitations, § 2:41
- mechanics' lien releases, § 2:35
- notices, § 2:20, 2:21
- optional provisions, generally, § 2:22 to 2:46
- payment
  - generally, § 2:6
  - approval, payment does not constitute, § 2:37
  - bonds, § 2:45
- plans, specifications and permits, § 2:5
- preamble, § 2:3
- receipt of signed copies of contract by both parties, § 2:29
- repossession right, § 2:30

## CONTRACTS—Cont'd

### Prime contracts—Cont'd

- residential work, notice before contracting for, § 2:21
- stop work, right to, § 2:15
- subrogation between insurers, § 2:27
- taxes and assessments, § 2:18
- time
  - completion of work, § 2:7
  - essence and progress of work, § 2:40
- waiver
  - claims by final payment, § 2:38
  - remedies, § 2:47
- Prime design professionals, prompt payment, § 1:112
- Printed vs. written provisions, § 1:24
- Privity of contract, § 1:7
- Progress of work
  - payments, § 1:108
  - subcontracts, § 2:86
- Promissory estoppel
  - mutual assent, § 1:6
  - reverse promissory estoppel, § 1:51
- Prompt payment
  - generally, § 1:106 to 1:114
  - amount received, payment of, § 1:107
  - dump truck payments, § 1:113
  - prime design professionals, § 1:112
  - progress payments, § 1:108
  - public agency, funds withheld in response to stop notice, § 1:109
  - retentions, payment of, § 1:110
  - state agencies, § 1:114
  - sureties, § 1:111
- Protection of work, subcontracts, § 2:81
- Protocols, § 1:2
- Public agencies
  - funds withheld in response to stop notice, § 1:109
  - work required by agency, subcontracts, § 2:96
- Public Contracts, this index

**CONTRACTS—Cont'd**

- Quantum meruit, § **1:96**
- Reading contracts, § **1:14**
- Receipt of signed copies of contract by both parties, prime contracts, § **2:29**
- Reimbursement charges, subcontracts, § **2:88**
- Releases. Mechanics' lien releases, above
- Repairs. Service and repair contracts, below
- Repossession
  - prime contracts, § **2:30**
  - subcontractors, § **2:94**
- Rescission, § **1:69**
- Residential work, notice before contracting, for prime contracts, § **2:21**
- Restitution vs. damages for breach of contract, § **1:70**
- Retentions, payment of, § **1:110**
- Roofing contracts, third-party beneficiaries, § **1:9**
- Service and repair contracts
  - generally, § **2:54**
  - defects in construction, economic loss defense, § **5:38**
  - home solicitation contracts for disaster repair, § **2:55**
  - licenses of contractors, § **4:57**
- Severability, § **1:56**
- Single-family dwellings
  - contract requirements for construction, § **2:49**
  - home improvement contracts, above
  - home solicitation contracts, above
  - insurance attachment, § **2:51**
  - service and repair contracts, above
- Special arbitration requirements, home improvement contracts, § **2:63**
- Special damages vs. general damages, § **1:78**
- Specialized contract forms
  - generally, § **2:48 to 2:63**
  - asbestos abatement work, written contract requirement, § **2:60**

**CONTRACTS—Cont'd**

- Specialized contract forms—Cont'd
  - Federal Truth in Lending Act, § **2:48**
  - home improvement contracts, above
  - landscape architects, detailed written contract requirement, § **2:62**
  - mechanics' lien law, notice to owner describing, § **2:50**
  - service and repair contracts, above
  - single family dwellings, above
- State agencies, prompt payment, § **1:114**
- Stop work
  - notice, § **1:68**
  - prime contracts, § **2:15**
  - subcontracts, § **2:90**
- Subcontracts
  - generally, § **2:64 to 2:113**
  - additional clauses, generally, § **2:86 to 2:113**
  - alternates, § **2:111**
  - approval, payment as, § **2:98**
  - arbitration, § **2:84**
  - assessments and reimbursement charges, § **2:88**
  - attorneys fees, § **2:74**
  - back charges against subcontractor, § **2:104**
  - basic subcontracts, generally, § **2:64 to 2:85**
  - bond, right to demand, § **2:99**
  - claims against owner by subcontractor, § **2:113**
  - commencement of work, § **2:68**
  - contractor's license, § **2:77**
  - default, § **2:82**
  - delays
    - generally, § **2:72**
    - withholding of damages, § **2:105**
  - description of work, § **2:64**
  - destruction of premises, § **2:71**
  - ejection of subcontractor from job, § **2:107**
  - extra work, § **2:70, 2:95, 2:100**
  - flow-down clause, § **2:106**

## **CONTRACTS—Cont'd**

Subcontracts—Cont'd  
 guarantee, § 2:83  
 indemnity, § 2:79, 2:87  
 insolvency, § 2:75  
 insurance, § 2:80  
 labor and materials, § 2:67  
 listing law, § 1:51  
 mechanics' lien releases, § 2:91  
 nonaward, § 2:109  
 notices, § 2:85  
 OSHA compliance, § 2:112  
 pass-through claims, § 2:73  
 payments  
   bonds, § 2:92  
   construction loan payments to subcontractor, § 2:89  
   schedules, § 2:65  
 pay-when-paid, § 2:97  
 permits, § 2:78, 2:103  
 plans and specifications, § 2:66  
 prime contractor as conduit for pay, § 2:108  
 progress of work, § 2:86  
 protection of work, § 2:81  
 public agency, work required by, § 2:96  
 repossession by subcontractor, § 2:94  
 stop work, right to, § 2:90  
 subcontract price, responsibility for, § 2:93  
 time  
   essence, § 2:76  
   schedules, § 2:101  
   trade unions, § 2:102  
   withdrawal of bid, § 2:69  
   work not limited to particular section of specifications, § 2:110  
 Subrogation, § 1:60, 2:27  
 Substantial performance, § 1:55  
 Sureties, prompt payment, § 1:111  
 Taxes and assessments, prime contracts, § 2:18  
 Temporary impossibility, § 1:61  
 Third-party beneficiaries  
   generally, § 1:8  
   indemnitees, § 1:103

## **CONTRACTS—Cont'd**

Third-party beneficiaries—Cont'd  
 roofing contracts, § 1:9  
 Time  
   prime contracts, above  
   subcontracts, above  
 Torts, § 1:3  
 Trade unions, subcontracts, § 2:102  
 Type III indemnity clause, § 1:102  
 Type II indemnity clause, § 1:101  
 Unauthorized agent, waiver by conduct of, § 1:44  
 Unconscionable provisions, § 1:28  
 Unilateral mistake, § 1:38  
 Unjust enrichment  
   generally, § 1:94 to 1:96  
   negligence vs. unjust enrichment, § 1:95  
 Usury and late charges, § 1:80  
 Waiver  
   generally, § 1:41 to 1:45  
   accord and satisfaction clause, § 1:45  
   breach of contract, § 1:66  
   conduct, waiver by, § 1:43  
   default, § 1:66  
   final payment, prime contracts, § 2:38  
   payment, waiver by, § 1:42  
   remedies, § 2:47  
   unauthorized agent, conduct of, § 1:44  
   writing requirement, § 1:41  
 Warranties, § 1:3  
 Wild clauses, § 2:1  
 Withdrawal of bid, subcontracts, § 2:69  
 Written contracts  
   generally, § 1:4, 2:2  
   modification of contract, § 1:48  
   waiver, § 1:41  
   written vs. printed provisions, § 1:24  
 Written notice, failure to give, § 1:87

## **CONTRIBUTION**

Equitable, defects in construction, § 5:264

## INDEX

### **COPYRIGHTS**

Plans, § 9:11

### **CORPORATE FRANCHISES**

Licenses of contractors, § 4:24

### **CORPORATE OPPORTUNITIES**

Business license taxes, § 9:24

### **COSTS**

Arbitration, § 3:74

Insurance, this index

Recovery of costs, invalid contracts,  
§ 7:118

### **COUNTERCLAIMS**

Licenses of contractors, § 4:41

### **COUNTEROFFERS**

Contracts, § 1:13

### **COUNTY CONTRACTS**

Public contracts, extra work, § 7:78,  
7:84

### **COVENANTS, CONDITIONS AND RESTRICTIONS**

Arbitration agreements, § 3:5

### **CRIMINAL CASES**

Asbestos, § 9:40

Manslaughter due to a safety viola-  
tion, § 9:50

Mediation, § 3:87

RICO, § 9:43

### **CROSS-COMPLAINTS**

Insurance, good faith settlement,  
§ 5:251

### **CUSTOM**

Contracts, construction and interpre-  
tation, § 1:22

### **DAMAGES**

Contracts, this index

Defects in Construction, this index

Delay Damages, this index

Liquidated Damages, this index

Public Contracts, this index

Punitive Damages, this index

### **DEBARMENT**

Prevailing wages, § 9:37

### **DEBARMENT—Cont'd**

Public contracts, § 7:23

### **DECEIT**

Fraud and Deceit, this index

### **DECLARATORY RELIEF**

Insurance, duty to defend, § 5:221

### **DEFAULT**

Contracts, this index

### **DEFECTS IN CONSTRUCTION**

Generally, § 5:1 to 5:264

Aas decision, § 5:35, 5:36

Agent, liability for fraud of, § 5:11

Allocation of fault, equitable  
indemnity and comparative  
fault, § 5:157

Amendment of certificate of merit,  
design professionals, § 5:101

Appreciable and actual harm, statutes  
of limitation and repose, § 5:126

Assumption of risk, § 5:31

Attorneys' fees, Magnuson-Moss  
Warranty Act, § 5:48

Attractive nuisance, jobsite as, § 5:82

Bankruptcy, § 9:29

Bodily injury, statutes of limitation  
and repose, § 5:141

Bonding capacity, liability of  
construction lender for impair-  
ment, § 5:87

Building code violation as negligence  
per se, § 5:5

Building department inspector,  
liability of, § 5:84

Building standards, residential  
construction defects, § 5:58

Bystanders, strict liability, § 5:26

CERCLA, preemption of California  
statute of limitation, § 5:138

Certificate of merit, design profes-  
sionals, § 5:100, 5:101

Class actions, § 5:18

Class actions under the Right to  
Repair Act, § 5:2

Collateral source rule, § 5:20

Comparative fault. Equitable  
indemnity and comparative  
fault, below

## DEFECTS IN CONSTRUCTION

### —Cont'd

- Completion and acceptance as defense, § 5:66
- Component injures other components, economic loss defense, § 5:37
- Concealment of cause of action and discovery rule, statutes of limitation and repose, § 5:125
- Construction lenders
  - liability, § 5:86, 5:87
  - responsibilities, § 5:75
- Construction manager, duty to architect, § 5:88
- Contractor's liability to owner, § 5:3
- Damages
  - economic loss defense, below emotional distress, § 5:15, 5:16
  - punitive damages, below residential construction defects, § 5:63
  - stigma and emotional distress, § 5:15
- Deceit. Fraud and deceit, below
- Defenses
  - economic loss defense, below, § 5:63
  - Genuine Dispute, § 5:262
  - residential construction defects, § 5:63
- Design immunity, liability of public agencies, § 5:123
- Design professionals
  - generally, § 5:88 to 5:104
  - amendment of certificate of merit, § 5:101
  - certificate of merit, § 5:100, 5:101
  - construction manager, duty to architect, § 5:88
  - contractor vs. architect, § 5:96
  - earthquakes, voluntary structural inspection after, § 5:102
  - estimates, § 5:90
  - expert fees, § 5:104
  - immunity of plan checkers and inspectors, § 5:103
  - negligence per se, § 5:98

## DEFECTS IN CONSTRUCTION

### —Cont'd

- Design professionals—Cont'd
  - negligent design and supervision, § 5:91
  - patron vs. architect, § 5:95
  - signing plans, § 5:92
  - soils design and nuisance, § 5:99
  - strict liability, § 5:93
  - third-party vs. design professional, § 5:94
  - third-party vs. environmental consultant, § 5:97
- Developer's liability to owner, § 5:3
- Dispute resolution requirements, homeowners associations, § 5:55
- Dust as trespass, § 5:14
- Earthquakes, voluntary structural inspection after, § 5:102
- Economic loss defense
  - generally, § 5:34 to 5:42
  - component injures other components, § 5:37
  - damage to product itself, § 5:41
  - fraud, § 5:42
  - identification of "product," § 5:39
  - no tort remedy for economic loss caused by construction defects, § 5:35, 5:62
  - physical injury, liability for, § 5:36
  - privity, absence of, § 5:40
  - residential construction defects, § 5:62
  - services, contract for, § 5:38
- Emotional distress, damages, § 5:15, 5:16
- Engineers, strict liability, § 5:25
- Equitable contribution, § 5:264
- Equitable indemnity and comparative fault
  - generally, § 5:33, 5:154 to 5:167
  - allocation of fault, § 5:157
  - defendant, duty to, § 5:162
- Equitable contribution, § 5:264
- express indemnity, § 5:160 et seq.
- faultless indemnitor, § 5:164
- fault of indemnitor, § 5:163
- fraudulent concealment, § 5:159



## DEFECTS IN CONSTRUCTION

### —Cont'd

- Equitable indemnity and comparative fault—Cont'd
  - homeowners associations, directors or unit owners, § 5:52
  - indemnity and comparative fault, § 5:158
  - joint fault, § 5:156
  - light type, indemnity clause in, § 5:165
  - nonnegligent general contractors, § 5:113
  - signature of indemnitee on indemnity agreement, § 5:166
  - strict liability, § 5:33
  - third-party beneficiaries, § 5:167
  - warranties, § 5:47
  - willful misconduct, § 5:159
- Equitable tolling vs. equitable estoppel, statutes of limitation and repose, § 5:147
- Estimates, design professionals, § 5:90
- Estoppel to rely on statutes of limitation and repose, § 5:143
- Expert fees, design professionals, § 5:104
- Expert testimony, § 5:4, 5:32, 5:104
- Express indemnity. Equitable indemnity and comparative fault, above
- False advertising and false claims, § 5:13
- Fraud and deceit
  - generally, § 5:6 to 5:11
  - agent, liability for fraud of, § 5:11
  - economic loss defense, § 5:42
  - inspectors, § 5:120
  - negligence and deceit, § 5:6
  - nondisclosure, § 5:8
  - processing of claim, § 5:7
  - public agencies, liability of, § 5:120
  - punitive damages, § 5:9
  - reliance on misrepresentations, § 5:10

## DEFECTS IN CONSTRUCTION

### —Cont'd

- Fraudulent concealment
  - equitable indemnity and comparative fault, § 5:159
  - statutes of limitation and repose, § 5:148
- Genuine Dispute defense, § 5:262
- Hirers. Nonnegligent general contractors, below
- Homeowner earthquake claims, statutes of limitation and repose, § 5:151
- Homeowners associations
  - generally, § 5:51 to 5:55
  - dispute resolution requirements, expansion of, § 5:55
  - duty to disclose construction defects, § 5:53
  - equitable indemnity against directors or unit owners, § 5:52
  - information to members, § 5:54
  - standing, § 5:51
  - warranties, § 5:51
- Housing discrimination, punitive damages, § 5:17
- Identification of “product,” economic loss defense, § 5:39
- Immunity
  - plan checkers and inspectors, § 5:103
  - public agencies, § 5:119
- Implied warranties, § 5:44 to 5:46
- Indemnity
  - equitable indemnity and comparative fault, above
  - statutes of limitation and repose, § 5:149
- Information to members, homeowners associations, § 5:54
- Inspectors, fraud and deceit, § 5:120
- Insurance, this index
- Joint fault, equitable indemnity and comparative fault, § 5:156
- Light type, indemnity clause in, § 5:165
- Limitation of actions. Statutes of limitation and repose, below

## DEFECTS IN CONSTRUCTION

### —Cont'd

Loopholes, residential construction defects, § 5:64  
 Magnuson-Moss Warranty Act and attorneys' fees, § 5:48  
 Malpractice actions, statutes of limitation and repose, § 5:131  
 Manufacturers, statutes of limitation and repose, § 5:142  
 Material suppliers, § 5:115  
 Necessary and indispensable parties, § 5:21  
 Negligence  
     deceit, § 5:6  
     design professionals, § 5:91, 5:98  
 Non-defective products, § 5:30  
 Nondelegable duties, nonnegligent general contractors, § 5:114  
 Nondisclosure, fraud and deceit, § 5:8  
 Nonnegligent general contractors  
     generally, § 5:105 to 5:114  
     express indemnity, § 5:113  
     hirers  
         generally, § 5:110  
         negligence, § 5:111  
         negligence, § 5:111 to 5:113  
         nondelegable duties, § 5:114  
         peculiar risk doctrine, § 5:105 et seq.  
         property owners, § 5:109  
 Owner vs. subcontractor  
     contract theory, § 5:78  
     tort theory, § 5:77  
 Patron, responsibility to, § 5:74  
 Peculiar risk doctrine. Nonnegligent general contractors, above  
 Physical injury, liability for, economic loss defense, § 5:36  
 Pipeline puncture, § 5:73  
 Plumbing officials, liability of association for negligence, § 5:85  
 President of contractor, personal liability of, § 5:80  
 Private statutes of limitation, § 5:150  
 Privity  
     generally, § 5:116

## DEFECTS IN CONSTRUCTION

### —Cont'd

Privity—Cont'd  
     economic loss defense, § 5:40  
     warranties, § 5:50  
 Processing of claim, fraud and deceit, § 5:7  
 Progressive injury, statutes of limitation and repose, § 5:127  
 Public agencies, liability of  
     generally, § 5:119  
     design immunity, § 5:123  
     fraud of inspectors, § 5:120  
     immunity, § 5:119  
     rumble at jobsite, § 5:122  
     statutes of limitation and repose, § 5:152  
     unlicensed contractor, permit to, § 5:121  
 Public jobs, liability of contractors on, § 5:117  
 Punitive damages  
     fraud and deceit, § 5:9  
     housing discrimination, § 5:17  
 Real property, statutes of limitation and repose, § 5:133  
 Recreational use statute, § 5:83  
 Reliance on misrepresentations, fraud and deceit, § 5:10  
 Repose, statutes of. Statutes of limitation and repose, below  
 Residential construction defects  
     generally, § 5:56 to 5:59  
     actionable defects, § 5:57  
     building standards, § 5:58  
     Chapter 4 prelitigation procedure, § 5:60  
     damages and defenses, § 5:63  
     economic loss, § 5:62  
     loopholes, § 5:64  
     statutes of repose, § 5:61  
     third parties, liability to, § 5:65  
     warranties, § 5:59  
 Right to Repair Act  
     generally, § 5:1  
     class actions under, § 5:2

## DEFECTS IN CONSTRUCTION

### —Cont'd

- Right to Repair Act, SB 800
  - liability for residential construction defects, § 5:57
  - statutes of repose, § 5:153
- Rumble at jobsite, liability of public agencies, § 5:122
- Safety, responsibility of prime subcontractor for, § 5:68
- SB 800. See Right to Repair Act, above
- Services contracts, economic loss defense, § 5:38
- Signatures
  - design professionals, § 5:92
  - indemnity agreements, § 5:166
- Small builders, strict liability, § 5:27
- Soils design and nuisance, design professionals, § 5:99
- Song-Beverly Consumer Warranty Act, building materials supplied by contractor, § 5:49
- Spoliation of evidence, § 5:81
- Standing
  - generally, § 5:19
  - homeowners associations, § 5:51
- Statutes of limitation and repose
  - generally, § 5:124 to 5:153
  - appreciable and actual harm, § 5:126
  - bodily injury, § 5:141
  - CERCLA, preemption of California statute, § 5:138
  - concealment of cause of action and discovery rule, § 5:125
  - equitable tolling vs. equitable estoppel, § 5:147
  - estoppel to rely on statute, § 5:143
  - five step process, equitable tolling and estoppel, § 5:146
  - four year statute of repose, § 5:128
  - fraudulent concealment, § 5:148
  - homeowner earthquake claims, revival of, § 5:151
  - indemnity claims, § 5:149
  - latent vs. patent, § 5:129, 5:130, 5:139
  - malpractice actions, § 5:131

## DEFECTS IN CONSTRUCTION

### —Cont'd

- Statutes of limitation and repose
  - Cont'd
  - manufacturers, § 5:142
  - private statutes of limitation, § 5:150
  - progressive injury, § 5:127
  - public entities, claims against, § 5:152
  - real property, injury to, § 5:133
  - residential construction defects, § 5:61
  - SB 800, statutes of repose
    - applicable to actions under, § 5:153
  - substantial completion, § 5:130, 5:137
  - ten year statute of repose, § 5:135
  - tolling, § 5:145 to 5:147
  - two prong test, § 5:132
  - two-step analysis, § 5:136
  - virtually unlimited liability, § 5:134
  - waiver of defense, § 5:144
  - willful misconduct, § 5:140
- Statutory exclusion, coverage for willful acts of the insured, § 5:263
- Stigma and emotional distress, damages, § 5:15
- Strict liability
  - generally, § 5:22
  - bystanders, § 5:26
  - design professionals, § 5:93
  - economic loss defense, above
  - engineers, § 5:25
  - equitable indemnity doctrine, § 5:33
  - limits of doctrine, § 5:28
  - small builders, § 5:27
  - subcontractors, third parties, § 5:24
- Subcontractors
  - liability of contractor for negligence of subcontractor, § 5:67
  - owner, responsibility of, § 5:70

## DEFECTS IN CONSTRUCTION

### —Cont'd

- Subcontractors—Cont'd
  - project manager, responsibility of, § 5:71
  - responsibilities, § 5:69
  - safety, responsibility of prime subcontractor for, § 5:68
  - strict liability, § 5:24
- Substantial completion, statutes of limitation and repose, § 5:130, 5:137
- Tenant vs. contractor for economic loss, § 5:79
- Third parties, residential construction defects, § 5:65
- Third-party beneficiaries, equitable indemnity and comparative fault, § 5:167
- Tolling of statutes of limitation and repose, § 5:145 to 5:147
- Traffic
  - interference with traffic, § 5:118
  - signal, delay installing, § 5:72
- Trespass, dust as, § 5:14
- Trust deed holder vs. contractor, § 5:76
- Types of defects, § 5:29
- Unlicensed contractors, liability of public agencies, § 5:121
- View lots, purchaser vs. developer, § 5:12
- Waiver
  - implied warranty, § 5:45
  - statutes of limitation and repose, § 5:144
- Warranties
  - generally, § 5:43 to 5:50
  - comparative negligence as defense, § 5:47
  - express warranties, generally, § 5:23
  - homeowners association, standing of, § 5:51
  - implied warranties, § 5:44 to 5:46
  - Magnuson-Moss Warranty Act and attorneys' fees, § 5:48
  - privity, § 5:50

## DEFECTS IN CONSTRUCTION

### —Cont'd

- Warranties—Cont'd
  - remote purchaser vs. remote purchaser, § 5:46
  - residential construction defects, § 5:59
  - Song-Beverly Consumer Warranty Act, building materials supplied by contractor, § 5:49
  - waiver of implied warranty, § 5:45
- Willful misconduct
  - equitable indemnity and comparative fault, § 5:159
  - statutes of limitation and repose, § 5:140

## DEFEND, DUTY TO

- Insurance, this index

## DEFENSES

- Defects in Construction, this index

## DELAY DAMAGES

- Mechanics liens, stop payment notices and payment bonds, § 6:21
- Public Contracts, this index

## DELAYS

- Contracts, this index
- Damages. Delay Damages, this index

## DELIVERY TO JOBSITE

- Mechanics liens, stop payment notices and payment bonds, material suppliers, § 6:9

## DEMANDS

- Stop payment notices, § 6:118

## DESCRIPTION OF WORK

- Contracts, this index

## DESIGN-BUILD-VALUE

### ENGINEERING

- Public contracts, § 7:33

## DESIGN IMMUNITY

- Defects in construction, liability of public agencies, § 5:123

## DESIGN PROFESSIONALS

- Architects, this index

## INDEX

### DESIGN PROFESSIONALS

#### —Cont'd

- Certification of performance, § 9:57
- Contracts, indemnitors, § 1:100
- Defects in Construction, this index
- Engineers, this index
- Mechanics Liens, Stop Payment  
Notices and Payment Bonds,  
this index
- Public Contracts, this index

### DESTRUCTION OF PROJECT OR PREMISES

- Contracts, this index

### DEVELOPERS

- Arbitration, homeowner/developer  
proceedings, § 3:39

### DIMINISHED VALUE

- Insurance, § 5:183

### DISASSOCIATION

- Licenses of contractors, responsible  
managing employee, § 4:47

### DISASTER REPAIR

- Home solicitation contracts, § 2:55

### DISCIPLINARY ACTIONS

- Licenses of Contractors, this index

### DISCLOSURES

- Arbitrators, § 3:32
- Insurance, settlement agreements,  
§ 5:253
- Truth-in-lending, § 9:14

### DISCOVERY

- Arbitration, § 3:83
- Insurance, duty to defend, § 5:217

### DISCRIMINATION

- Business license taxes, § 9:23
- Housing discrimination, defects in  
construction, punitive damages,  
§ 5:17
- Licenses of contractors, pursuit of  
race discrimination claim by  
unlicensed contractor, § 4:44

### DISGORGEMENT

- Unlicensed contractors, § 4:43

### DISPUTE RESOLUTION

- Arbitration, this index
- Defects in construction, homeowners  
associations, § 5:55
- Mediation, this index
- Prime contracts, § 2:25

### DISQUALIFICATION

- Attorney, § 9:51

### DISSOLUTION OF CORPORATION

- Subsequent actions, § 9:25

### DIVERSION OF FUNDS

- Generally, § 9:1 to 9:4
- Advice to divergent, § 9:4
- False vouchers, § 9:2
- Licenses of contractors, § 4:13
- Willful diversion, § 9:3

### DOMESTIC PARTNERS

- Public contracts, rejection of low bid,  
§ 7:21

### DRAINAGE

- Generally, § 9:4

### DRY OR WET ROT EXCLUSION

- Property insurance, § 5:225

### DUE PROCESS

- Arbitration hearings, § 3:44
- Prevailing wages, § 9:32

### DUMP TRUCK PAYMENTS

- Contracts, § 1:113

### DUST

- Defects in construction, trespass,  
§ 5:14

### EARLY COMPLETION BONUS

- Prime contracts, § 2:43

### EARTH MOVEMENT EXCLUSION

- Property insurance, § 5:227

### EARTHQUAKES

- Defects in construction, voluntary  
structural inspection, § 5:102
- Mediation, § 3:86
- Revival, property insurance, § 5:245

**ECONOMIC DURESS**

Mechanics liens, stop payment  
notices and payment bonds,  
signing of release under duress,  
§ 6:78

**ECONOMIC LOSS**

Defects in Construction, this index  
Insurance, emotional distress,  
§ 5:203

**EFFICIENT CAUSE**

Property insurance, § 5:223

**EICHLEAY FORMULA**

Contracts, § 1:92

**EJECTION**

Contracts, § 1:85, 2:107

**ELECTRONIC TRANSACTIONS**

Contracts, § 1:15

**EMINENT DOMAIN**

Generally, § 9:47

**EMOTIONAL DISTRESS**

Contracts, damages, § 1:75  
Defects in construction, damages,  
§ 5:15, 5:16  
Insurance, § 5:175, 5:202, 5:203

**ENFORCEMENT**

Arbitration, this index  
Licensing law, § 4:67

**ENGINEERS**

Defects in construction, strict  
liability, § 5:25  
Public Contracts, this index

**ENVIRONMENTAL CLEANUP  
PROCEEDINGS**

Insurance, duty to defend, § 5:210

**ENVIRONMENTAL IMPACTS**

Generally, § 9:55

**EQUAL PROTECTION**

Public contracts, minority and  
women business enterprises,  
§ 7:41 to 7:44

**EQUIPMENT RENTAL**

Licenses of contractors, § 4:28

**EQUITABLE CONTRIBUTION**

Defects in construction, § 5:264

**EQUITABLE LIENS**

Mechanics Liens, Stop Payment  
Notices and Payment Bonds,  
this index

**EQUITABLE TOLLING**

Stop payment notices, § 6:116

**ERISA**

Mechanics liens, stop payment  
notices and payment bonds,  
§ 6:13  
Prevailing wages, § 9:33  
Public contracts, stop payment  
notices, subcontractors and sup-  
pliers, § 8:3

**ESTIMATES**

Contracts, § 1:53  
Defects in construction, design  
professionals, § 5:90

**ESTOPPEL**

Defects in construction, statutes of  
limitation and repose, § 5:143  
Mechanics liens, stop payment  
notices and payment bonds,  
notice of completion, § 6:36  
Public contracts, § 7:15

**EVIDENCE**

Arbitration, § 3:37, 3:46, 3:70  
Bias of arbitrators, presumptions,  
§ 3:37  
Licenses of contractors, burden of  
proof, § 4:49  
Parol evidence rule, contracts, § 1:31  
to 1:33  
Spoliation of evidence, defects in  
construction, § 5:81

**EXCESS CARRIERS**

Insurance, duty to defend, § 5:213,  
5:214

**EXCULPATORY CLAUSES**

Contracts, this index



## INDEX

### EXONERATION

Mechanics liens, stop payment  
notices and payment bonds,  
§ 6:86

### EXPERT FEES

Defects in construction, design  
professionals, § 5:104

### EXPERT TESTIMONY

Defects in construction, § 5:4, 5:32,  
5:104  
Insurance, expert linguist testimony,  
§ 5:174

### EXTRA WORK

Contracts, this index  
Mechanics liens, stop payment  
notices and payment bonds,  
§ 6:20  
Public Contracts, this index

### FALSE ADVERTISING AND FALSE CLAIMS

Defects in construction, § 5:13  
Public Contracts, this index

### FALSE IMPRISONMENT

Shop stewards, § 9:22

### FALSE LIENS

Mechanics liens, stop payment  
notices and payment bonds,  
§ 6:30

### FALSE VOUCHERS

Diversion of funds, § 9:2

### FAULTY WORKMANSHIP EXCLUSION

Property insurance, § 5:228

### FICTITIOUS DEFENDANTS

Mechanics liens, stop payment  
notices and payment bonds,  
§ 6:50

### FINALITY OF DECISION

Arbitration, § 3:75

### FINANCE CHARGES

Truth-in-lending, § 9:15

### FINANCING

Prime contracts, contract not  
conditioned on financing, § 2:28

### FLOODWATERS

Surface waters, § 9:7, 9:8

### FLOW-DOWN CLAUSE

Subcontracts, § 2:106

### FORCE ACCOUNT

Public contracts, § 7:48

### FORECLOSURE OF TRUST DEEDS

Mechanics liens, stop payment  
notices and payment bonds,  
priorities, § 6:100

### FOREIGN PROJECTS

Stop payment notices, § 6:108

### FORFEITURE

Contracts, § 1:21

### FORMALITY

Arbitration, § 3:73

### FRAUD AND DECEIT

Contracts, this index  
Defects in Construction, this index  
Licenses of contractors, nonlicensure  
as defense to, § 4:48

### FRAUDULENT CONCEALMENT

Defects in Construction, this index

### FRINGE BENEFITS

Payment bonds, § 6:94

### FUTURE ADVANCES

Mechanics liens, stop payment  
notices and payment bonds,  
§ 6:101

### GENUINE DISPUTE

Defense, defects in construction,  
§ 5:262

### GEOLOGY

Licenses of contractors, § 4:63

### GOOD FAITH

Generally, § 9:45  
Insurance, this index

**GOOD FAITH—Cont'd**

Public contracts, minority and women business enterprises, § 7:41

**GROUNDWATER  
CONTAMINATION**

Insurance, § 5:205

**GUARANTEES**

Contracts, this index

**HAULING**

Licenses of contractors, § 4:28

**HAZARDOUS MATERIALS**

Insurance, hazardous waste cleanup costs, § 5:201

Public contracts, extra work, § 7:79

**HEARINGS**

Arbitration, this index

Public contracts, subcontractors listing law, § 7:73

**HIGHEST RESPONSIBLE BIDDER**

Public contracts, § 7:17

**HIRERS**

Defects in Construction, this index

**HOME IMPROVEMENT  
CONTRACTS**

Contracts, this index

Licenses of contractors, § 4:56

**HOME OFFICE OVERHEAD**

Contracts, damages, § 1:92

**HOMEOWNERS ASSOCIATIONS**

Defects in Construction, this index

Insurance, good faith settlements, § 5:257

**HOMEOWNERS INSURANCE**

Insurance, this index

**HOME SOLICITATION  
CONTRACTS**

Contracts, this index

**HOUSING DISCRIMINATION**

Defects in construction, punitive damages, § 5:17

**IDENTIFICATION OF  
“PRODUCT”**

Defects in construction, economic loss defense, § 5:39

**ILLEGAL CONTRACTS**

Generally, § 1:18

Arbitration, § 3:17

**IMMUNITY**

Arbitration, this index

Defects in Construction, this index

Public agencies, § 5:119

**IMPLIED COVENANTS**

Contracts, § 1:82, 1:84

Public contracts, § 7:51

**IMPLIED REPRESENTATIONS**

Public contracts, extra work, § 7:82

**IMPLIED WARRANTIES**

Defects in construction, § 5:44 to 5:46

Public contracts, extra work, § 7:83

**IMPOSSIBILITY**

Contracts, this index

**INDEMNITY**

Contracts, this index

Defects in Construction, this index

Licenses of contractors, § 4:41

Public contracts, design professionals, § 7:8

**INDEPENDENT CONTRACTORS**

Employees vs., § 9:34

**INDEPENDENT COUNSEL**

Insurance, duty to defend, § 5:219, 5:220

**INDEPENDENT INVESTIGATION**

Prime contracts, § 2:39

**INDIAN LAND**

Mechanics liens, stop payment notices and payment bonds, § 6:29

**INDIVIDUAL RESPONSIBILITY**

Prime contracts, § 2:34

## INDEX

### INFRASTRUCTURE IMPROVEMENTS

Licenses of contractors, compensation of unlicensed developer for, § 4:50

### INSOLVENCY

Contracts, this index

### INSPECTORS

Defects in construction, fraud and deceit, § 5:120

### INSURANCE

Generally, § 5:168 et seq.

“Accident,” § 5:173

Additional insured

generally, § 5:191 to 5:193

defend, duty to, § 5:211, 5:212

Advertising injury, § 5:204

Affirmative defenses, duty to defend, § 5:209

Allocations. Good faith settlement, below

Asbestos damage, trigger for, § 5:197

Assigned indemnity agreement, attorneys’ fees, good faith settlement, § 5:261

Assumption of liability by contract, § 5:188

Bad faith, § 5:194, 5:195

Breach of contract, property damage caused by, § 5:190

Broad form, § 5:184

Business exclusion, § 5:187

Collapse coverage, property insurance, § 5:234

Construction of policies

generally, § 5:172 to 5:179

“accident,” § 5:173

emotional distress, § 5:175

expert linguist testimony, § 5:174

“occurrence,” § 5:175 et seq.

pipe leak, § 5:178

property damage caused by

substandard work, § 5:177

substandard work, installation of, § 5:176, 5:177

### INSURANCE—Cont’d

Construction of policies—Cont’d  
triggering of coverage by occurrence of property damage, § 5:179

Continuous injury trigger, progressive loss, § 5:196

Contracts, this index

Costs

defense, reimbursement of costs of, § 5:216

good faith settlement, § 5:252

Credit for settlement money, good faith settlement, § 5:255

Cross-complaints, dismissal of, good faith settlement, § 5:251

Declaratory relief action as malicious prosecution, duty to defend, § 5:221

Defects in construction, generally, § 5:168 et seq.

Defend, duty to

generally, § 5:206 et seq.

additional insured, § 5:211, 5:212

affirmative defense, claim asserted as, § 5:209

costs of defense, reimbursement of, § 5:216

declaratory relief action as malicious prosecution, § 5:221

discovery on issue of duty to defend, § 5:217

environmental cleanup proceedings, § 5:210

excess carrier, tender to, § 5:213, 5:214

incompetent independent counsel, § 5:220

independent counsel for insured, § 5:219, 5:220

performance bond, claim based on, § 5:218

“possibility” of coverage, § 5:208

pre-tender defense costs, § 5:214

punitive damages, § 5:207

voluntary payment, § 5:215

Destruction of project under construction, property insurance, § 5:240

## **INSURANCE—Cont'd**

- Diminished value, § 5:183
- Disclosure of settlement agreement, good faith settlement, § 5:253
- Discovery on issue of duty to defend, § 5:217
- Earth movement exclusion, property insurance, § 5:227
- Earthquake insurance claims, revival, property insurance, § 5:245
- Economic loss causing emotional distress, § 5:203
- Efficient cause, property insurance, § 5:223
- Eleven claims, eleven deductibles, § 5:199
- Emotional distress, § 5:175, 5:202, 5:203
- Environmental cleanup proceedings, duty to defend, § 5:210
- Equitable tolling of limitation of actions, property insurance, § 5:236
- Excess carriers, duty to defend, § 5:213, 5:214
- Exclusion of coverage, willful acts of the insured, § 5:263
- Expert linguist testimony, § 5:174
- Faulty workmanship exclusion, property insurance, § 5:228
- Good faith settlement
  - generally, § 5:246
  - allocations
    - generally, § 5:247 to 5:249
    - effect of allocations, § 5:249
    - improper allocation, § 5:248
    - indispensability, § 5:247
  - assigned indemnity agreement, attorneys' fees, § 5:261
  - attack, survival of, § 5:254
  - costs, § 5:252
  - credit for settlement money, § 5:255
  - cross-complaints, dismissal of, § 5:251
  - defendant who settles remains party, § 5:259
  - disclosure of settlement agreement, § 5:253

## **INSURANCE—Cont'd**

- Good faith settlement—Cont'd
  - effect of allocations, § 5:249
  - homeowners association as bound by settlement, § 5:257
  - improper allocation, § 5:248
  - indispensability, allocations, § 5:247
  - intent to injure, § 5:258
  - joint tortfeasors, § 5:260
  - liability insurer as bound by settlement, § 5:256
  - valuation, support by substantial evidence, § 5:250
- Groundwater contamination and trespass, § 5:205
- Hazardous waste cleanup costs, § 5:201
- Homeowners association as bound by good faith settlement, § 5:257
- Homeowners insurance. Property insurance, below
- Impaired property exclusion, property insurance, § 5:230
- Incompetent independent counsel, duty to defend, § 5:220
- Independent counsel for insured, duty to defend, § 5:219, 5:220
- Intent to injure, good faith settlement, § 5:258
- Joint tortfeasors, good faith settlement, § 5:260
- Latent defect exclusion, property insurance, § 5:226
- Liability insurance
  - generally, § 5:170
  - good faith settlement, insurer bound by, § 5:256
  - licenses of contractors, § 4:15
- Limitation of actions. Property insurance, below
- Loss-in-progress rule, § 5:180
- Mold exclusion, property insurance, § 5:225
- Negligence
  - additional insured, § 5:193
  - claims handling, § 5:169, 5:170
  - work exclusion vs. negligence of other contractors, § 5:185

## INDEX

### INSURANCE—Cont'd

- No suit, no coverage, § 5:200
- Obligation to provide insurance, § 5:168
- “Occurrence,” § 5:175 et seq.
- Performance bonds, duty to defend, § 5:218
- Physical damage, absence of, property insurance, § 5:238
- Pipe leak, § 5:178
- Pollution exclusion, property insurance, § 5:233
- “Possibility” of coverage, duty to defend, § 5:208
- Pre-tender defense costs, § 5:214
- Products-completed operations, § 5:182 to 5:184
- Professional services exclusion, § 5:186
- Property damage caused by substandard work, § 5:177
- Property insurance
  - generally, § 5:222 to 5:244
  - collapse coverage, § 5:234
  - destruction of project under construction, § 5:240
  - earth movement exclusion, § 5:227
  - earthquake insurance claims, revival of, § 5:245
  - efficient cause, § 5:223
  - equitable tolling of limitation of actions, § 5:236
  - exception to exclusion does not extend coverage, § 5:231
  - faulty workmanship exclusion, § 5:228
  - homeowners insurance, generally, § 5:224 et seq.
  - impaired property exclusion, § 5:230
  - latent defect exclusion, § 5:226
  - limitation of actions
    - generally, § 5:235 to 5:237
    - equitable tolling, § 5:236
  - physical damage, absence of, § 5:238
  - pollution exclusion, § 5:233
  - rain damage, § 5:232
  - repair by insurer, § 5:244

### INSURANCE—Cont'd

- Property insurance—Cont'd
  - replacement cost, § 5:243
  - subrogation, § 5:241, 5:242
  - sue and labor clause, § 5:239
  - third-party negligence exclusion, § 5:229
  - waiver of subrogation, § 5:242
  - wet or dry rot exclusion or mold exclusion, § 5:225
- Public contracts, § 7:56
- Punitive damages
  - bad faith, § 5:194
  - defend, duty to, § 5:207
- Rain damage, property insurance, § 5:232
- Repair by insurer, property insurance, § 5:244
- Replacement cost, property insurance, § 5:243
- Retained limits, § 5:198
- Subrogation, property insurance, § 5:241, 5:242
- Substandard work, installation of, § 5:176, 5:177
- Sue and labor clause, property insurance, § 5:239
- Suretyship and bad faith, § 5:195
- Third-party negligence exclusion, property insurance, § 5:229
- Tort vs. contract vs. fraud, § 5:189
- Triggering of coverage by occurrence of property damage, § 5:179
- Valuation, support by substantial evidence, good faith settlement, § 5:250
- Voluntary payment, duty to defend, § 5:215
- Waiver of subrogation, property insurance, § 5:242
- Wet or dry rot exclusion, property insurance, § 5:225
- Work exclusion, § 5:181, 5:185

### INTENT TO INJURE

- Insurance, good faith settlement, § 5:258

### INTEREST

- Contracts, damages, § 1:79

**INTEREST—Cont'd**

Prejudgment, mechanics liens, stop payment notices and payment bonds, § 6:124

Usury, § 1:80

**INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

Publication of complaints by unhappy homebuyers, § 9:30

**INTERPRETATION**

Construction and Interpretation, this index

**INVERSE CONDEMNATION**

Generally, § 9:53

**IRRESPONSIBLE BIDDER**

Public contracts, § 7:22

**JOINT CHECKS**

Mechanics liens, stop payment notices and payment bonds, releases, § 6:81, 6:82

**JOINT FAULT**

Defects in construction, equitable indemnity and comparative fault, § 5:156

**JOINT LICENSES**

Licenses of contractors, § 4:10

**JOINT TORTFEASORS**

Insurance, good faith settlement, § 5:260

**JUDICIAL REFERENCE AGREEMENTS**

Unconscionability, § 3:15

**JURY TRIAL**

Arbitration, § 3:82

**LABOR AND EMPLOYMENT**

Generally, § 9:54

**LABOR AND MATERIALS**

Contracts, this index

**LANDSCAPE ARCHITECTS**

Detailed written contract requirement, § 2:62

**LANDSCAPE CONTRACTORS**

Licenses of contractors, § 4:29

**LANDSLIDES**

Generally, § 9:10

**LATE CHARGES**

Contracts, § 1:80

**LATENT DEFECT EXCLUSION**

Property insurance, § 5:226

**LATE PAYMENTS**

Prime contracts, § 2:46

**LATERAL SUPPORT**

Adjacent property, § 9:20

**LEASES**

Public contracts, § 7:49

**LIABILITY INSURANCE**

Insurance, this index

**LICENSES**

Business License Taxes, this index  
Contractors. Licenses of Contractors, this index

**LICENSES OF CONTRACTORS**

Generally, § 4:1 to 4:68  
Application of licensing law, § 4:67  
Architects  
    generally, § 4:32  
    construction managers, § 4:35  
Bankruptcy, § 4:12  
Bonds  
    generally, § 4:9  
    judgments, unsatisfied, § 4:17  
Breach of contract, § 4:19  
Building inspectors, § 4:23  
Burden of proof, § 4:49  
Citations, § 4:38  
Civil penalties for nonlicensure, § 4:21  
Classifications, § 4:8  
Compensation denied to unlicensed contractors, § 4:39  
Construction managers  
    generally, § 4:33 to 4:35  
    architects, § 4:35



## LICENSES OF CONTRACTORS

### —Cont'd

- Construction managers—Cont'd
  - disassociation of responsible managing employee, § 4:47
  - registered professional engineers, § 4:34
- Contractor, defined, § 4:27
- Contractors' State License Law
  - failure to obtain a permit, willful violation, § 4:64
  - statutory attorney fees, violation of, § 4:65
- Corporate franchises, § 4:24
- Counterclaims, § 4:41
- Deliberate failure to pay, § 4:14
- Disassociation of responsible managing employee, § 4:47
- Disciplinary actions
  - generally, § 4:38
  - disclosures, § 4:25
- Disgorgement by unlicensed contractors, § 4:43
- Diversion of funds, § 4:13
- Doctrine of illegality extends to other licensed professions, § 4:46
- Enforcement of licensing law, § 4:67
- Equipment rental, § 4:28
- Equitable indemnity, § 4:41
- Failure to obtain a permit under Contractors' State License Law, willful violation, § 4:64
- Federal contracting, generally, § 4:7
- Fraud action, nonlicensure as defense to, § 4:48
- Full period of job, license not effective for, § 4:40
- Geology, geophysicist license, § 4:63
- Good and workmanlike condition, will departure from accepted trade standards, § 4:68
- Hauling, § 4:28
- Home improvement contracts, § 4:56
- Infrastructure improvements, compensation of unlicensed developer for, § 4:50
- Joint licenses, § 4:10
- Labor contractors, § 4:4
- Landscaping contractors, § 4:29

## LICENSES OF CONTRACTORS

### —Cont'd

- Liability insurance, § 4:15
- Licensing law, application and enforcement of, § 4:67
- Local agencies, regulation of contractors by, § 4:26
- Material suppliers, § 4:36
- Minor work, exemption for, § 4:5
- Necessity, § 4:1
- Offset of earnings, § 4:42
- Oral contract to construct residence, § 4:58
- Out-of-state work, § 4:37
- Owner-builder exemption, § 4:27
- Owner who employs unlicensed contractor, liability of
  - generally, § 4:59 to 4:62
  - acts of unlicensed contractor, § 4:62
  - civil damages, § 4:60
  - tree trimmer, compliance with Cal OSHA regulations, § 4:61
- Partial recovery, § 4:55
- Potential for liability, § 4:22
- Promissory notes, § 4:51
- Race discrimination claim, pursuit by unlicensed contractor, § 4:44
- Registered professional engineers, construction managers, § 4:34
- Responsible managing employee, § 4:11
- Reverse application, § 4:53
- Rural fire prevention work, exemption for, § 4:6
- Service and repair contracts, § 4:57
- Specialty, wrong license, § 4:52
- Statute of limitations, § 4:66
- Statutory attorneys fees for violation of Contractor8217s State License Law, § 4:65
- Subcontractors, § 4:54
- Substantial compliance, § 4:45
- Supervisors and employees, § 4:30
- Surety exemption, § 4:3
- Taxes, failure to pay, § 4:18
- Tree trimmer, compliance with Cal OSHA regulations, § 4:61
- Unfair competition, § 4:22

**LICENSES OF CONTRACTORS**

**—Cont'd**

- Unlicensed prime vs. licensed subcontractor, § 4:31
- Vendor to unlicensed contractor, § 4:20
- Void contracts, unlicensed contractors, § 4:2
- Warranties, § 4:41
- Willful departure from accepted trade standards of good and workmanlike condition, § 4:68
- Willful failure to pay, § 4:14
- Willful violation, failure to obtain a permit under Contractors' State License Law, § 4:64
- Workers' compensation insurance, § 4:15
- Wrong license, § 4:52

**LIMITATION OF ACTIONS**

- Arbitration or submission, agreement for, § 3:19
- Defects in Construction, this index
- Insurance, this index
- Licenses of contractors, § 4:66
- Mechanics Liens, Stop Payment Notices and Payment Bonds, this index
- Prime contracts, § 2:41
- Public contracts, payment bonds, subcontractors and suppliers, § 8:16, 8:17

**LIQUIDATED DAMAGES**

- Contracts, this index
- Public Contracts, this index

**LIS PENDENS**

- Mechanics liens, stop payment notices and payment bonds, § 6:51

**LITIGATION PRIVILEGE**

- Public contracts, False Claims Act, § 7:112

**LOOPHOLES**

- Defects in construction, residential construction, § 5:64

**LOSS-IN-PROGRESS RULE**

- Insurance, § 5:180

**LOST PROFITS**

- Contracts, § 1:115

**LOWBALL ESTIMATES**

- Mechanics liens, stop payment notices and payment bonds, preliminary notice, § 6:56

**MAGNUSON-MOSS WARRANTY ACT**

- Defects in construction, attorneys' fees, § 5:48

**MALICIOUS PROSECUTION**

- Mechanics liens, stop payment notices and payment bonds, § 6:27

**MALPRACTICE**

- Defects in construction, statutes of limitation and repose, § 5:131

**MANIFEST DISREGARD OF LAW**

- Arbitration awards, § 3:57

**MANSLAUGHTER**

- Safety violation, due to a, § 9:50

**MANUFACTURERS**

- Defects in construction, statutes of limitation and repose, § 5:142

**MARKET VALUE DAMAGES**

- Contracts, § 1:72

**MATERIAL SUPPLIERS**

- Contracts, bids, § 1:52
- Defects in construction, § 5:115
- Licenses of contractors, § 4:36
- Mechanics Liens, Stop Payment Notices and Payment Bonds, this index
- Public Contracts, this index

**MECHANICS LIENS, STOP PAYMENT NOTICES AND PAYMENT BONDS**

- Generally, § 6:1 to 6:124
- Abandonment, breach of contract, § 6:19
- Amount of lien, § 6:18

**MECHANICS LIENS, STOP  
PAYMENT NOTICES AND  
PAYMENT BONDS—Cont'd**

Arbitration  
generally, § 3:48, 6:52  
attorneys' fees, stop payment  
notices, § 6:107

Attorneys' fees  
generally, § 6:22, 6:85  
payment bond surety, liability  
based on clause in  
subcontract, § 6:91  
stop payment notices, § 6:106,  
6:107

Bankruptcy  
generally, § 6:24  
limitation of actions, effect on,  
§ 6:48

Basic theory, § 6:2

Bonds, stop payment notices, § 6:112

Cessation without completion  
generally, § 6:45  
notice of cessation  
generally, § 6:46  
notice of recording notice of  
completion or notice of  
cessation, § 6:34

Clouds on title, policy against, § 6:31

Commencement of improvement,  
priority from, § 6:97

Commencement of work, site  
improvements, § 6:103

Constitutional law, § 6:4, 6:6

Construction lenders, stop payment  
notices, § 6:122

Contents of lien, § 6:16

Contracts, this index

Declaration to procure payment,  
releases, § 6:75

Definitions  
completion, § 6:39  
mechanics lien, § 6:5

Delay damages, § 6:21

Delivery to jobsite, material suppli-  
ers, § 6:9

Demand, stop payment notices,  
§ 6:118

Design professionals liens  
generally, § 6:11, 6:123

**MECHANICS LIENS, STOP  
PAYMENT NOTICES AND  
PAYMENT BONDS—Cont'd**

Design professionals liens—Cont'd  
unbuilt projects, lien for, § 6:10

Economic duress, signing of release  
under, § 6:78

Effect of lien, § 6:23

Equitable lien claims  
abolition, § 6:119  
federal projects, § 6:120  
trust fund theory, § 6:121

Equitable tolling, stop payment  
notices, § 6:116

ERISA, § 6:13

Estoppel, notice of completion,  
§ 6:36

Exoneration, § 6:86

Extent of lien, § 6:25

Extra work, § 6:20

False lien, § 6:30

Federal projects, equitable lien  
claims, § 6:120

Fictitious defendants, § 6:50

Foreclosure of trust deeds, priorities,  
§ 6:100

Foreign projects, stop payment  
notices, § 6:108

Fringe benefits, payment bonds,  
§ 6:94

Future advances, § 6:101

Garnishment vs. joint check agree-  
ment, releases, § 6:82

Improvements not ordered by owner  
generally, § 6:66  
notice of nonresponsibility, below

Indian land, § 6:29

Joint checks, releases, § 6:81, 6:82

Labor contractors, § 6:12

Limitation of actions  
generally, § 6:47, 6:88  
bankruptcy, effect of, § 6:48  
preliminary notice requirement,  
§ 6:89  
20 day notice vs. 15/75 day notice,  
§ 6:90

Lis pendens, § 6:51

Lowball estimate, preliminary notice,  
§ 6:56

**MECHANICS LIENS, STOP  
PAYMENT NOTICES AND  
PAYMENT BONDS—Cont'd**

Malicious prosecution, § 6:27

Material suppliers  
generally, § 6:8  
delivery to jobsite, § 6:9  
notice of completion, § 6:38

Notice  
generally, § 6:17  
cessation without completion,  
above  
completion. Notice of completion,  
below  
lis pendens, § 6:51  
nonresponsibility. Notice of  
nonresponsibility, below  
owner, notice to, § 6:53  
preliminary notice, below  
stop payment notices, below

Notice of completion  
generally, § 6:33 to 6:35  
completion, defined, § 6:39  
effect, § 6:35  
estoppel, § 6:36  
material suppliers, § 6:38  
notice of recording notice of  
completion or notice of cessa-  
tion, § 6:34  
premature recording of lien, § 6:40  
public agency, acceptance of work  
by, § 6:41, 6:42  
separate original contracts, § 6:44  
separate residential units, § 6:43  
substantial compliance, § 6:37

Notice of nonresponsibility  
generally, § 6:67  
effect of notice, § 6:68  
interplay with preliminary notice,  
§ 6:69

Optional advances, § 6:101

Pay-if-paid clause, releases, § 6:79,  
6:80

Payment bonds  
generally, § 6:87  
fringe benefits, § 6:94  
furnishing of bond by certain proj-  
ect owners, § 6:95

**MECHANICS LIENS, STOP  
PAYMENT NOTICES AND  
PAYMENT BONDS—Cont'd**

Payment bonds—Cont'd  
surety, liability for attorneys' fees  
based on clause in  
subcontract, § 6:91

Personal property  
generally, § 6:14  
stop payment notices, § 6:109

Persons who may claim lien, § 6:7

Prejudgment interest, § 6:124

Preliminary notice  
generally, § 6:54  
contents of notice, § 6:58  
limitation of actions, § 6:89  
lowball estimate, § 6:56  
notice of nonresponsibility,  
interplay with, § 6:69  
persons who must give notice,  
§ 6:55  
persons who receive notice, § 6:57  
premature notice, § 6:64  
proof of service of notice, § 6:61  
recording of notice, § 6:63  
reputed, not actual, owner, § 6:65  
service of notice, § 6:60  
strict compliance, § 6:62  
work covered by notice, § 6:59

Premature preliminary notice, § 6:64

Premature recording of lien, notice of  
completion, § 6:40

Priorities  
generally, § 6:96  
commencement of improvement,  
priority from, § 6:97  
foreclosure of trust deeds, § 6:100  
release, recording of, § 6:98  
site work, liens for, § 6:104  
trust deeds, § 6:99, 6:100

Procedure, § 6:15

Progress release forms, § 6:74

Proof of service of preliminary  
notice, § 6:61

Proper court, § 6:49

Public agency, acceptance of work  
by, § 6:41, 6:42

Public property, § 6:28

**MECHANICS LIENS, STOP**

**PAYMENT NOTICES AND  
PAYMENT BONDS—Cont'd**

- Public works subcontract, pay-if-paid clause, releases, § **6:80**
- Recording of preliminary notice, § **6:63**
- Releases
  - generally, § **6:70**
  - declaration to procure payment, § **6:75**
  - decrees, § **6:32**
  - economic duress, signing of release under, § **6:78**
  - effective period covered by release, § **6:77**
  - garnishment vs. joint check agreement, § **6:82**
  - joint checks, § **6:81, 6:82**
  - pay-if-paid clause, § **6:79, 6:80**
  - progress release forms, § **6:74**
  - public works subcontract, pay-if-paid clause, § **6:80**
  - release bonds, § **6:83**
  - statutory release forms, § **6:71**
  - stop payment notices, § **6:117**
  - subsequent claims not barred by release, § **6:72**
  - tender, § **6:73**
  - unpaid retention, coverage of, § **6:76**
- Separate original contracts, notice of completion, § **6:44**
- Separate residential units, notice of completion, § **6:43**
- Service of preliminary notice, § **6:60**
- Site improvements
  - commencement of work, § **6:103**
  - priority of liens for site work, § **6:104**
  - special rules, § **6:102**
- Slander of title, § **6:26**
- Stop payment notices
  - generally, § **6:105**
  - arbitration attorneys' fees, § **6:107**
  - attorneys' fees, § **6:106, 6:107**
  - bond, § **6:112**
  - construction lenders, § **6:122**
  - demand, § **6:118**

**MECHANICS LIENS, STOP**

**PAYMENT NOTICES AND  
PAYMENT BONDS—Cont'd**

- Stop payment notices—Cont'd
  - effect of notice, § **6:114**
  - equitable tolling, § **6:116**
  - foreign projects, § **6:108**
  - personal property contracts, § **6:109**
- Public Contracts, this index
- release bonds and payment bonds, § **6:117**
- surety, affidavit of, § **6:113**
- targets of notices, § **6:111**
- time limits and procedure, § **6:115**
- Strict compliance, preliminary notice, § **6:62**
- Subcontractors, § **6:8**
- Subrogation, § **6:93**
- Subsequent claims not barred by release, § **6:72**
- Substantial compliance, notice of completion, § **6:37**
- Summary proceedings, § **6:84**
- Surety, affidavit of, stop payment notices, § **6:113**
- Targets of stop payment notices, § **6:111**
- Tender of release, § **6:73**
- Third-tier subcontractors, protection of, § **6:92**
- Time limits
  - generally, § **6:15**
  - limitation of actions, above stop payment notices, § **6:115**
- Trust deeds, priorities, § **6:99, 6:100**
- Trust fund theory, equitable lien claims, § **6:121**
- Unbuilt projects, design professionals lien for, § **6:10**
- Unclean hands, § **6:3**
- Unpaid retention, coverage of, § **6:76**
- Work covered by preliminary notice, § **6:59**

**MEDIATION**

- Generally, § **3:85 to 3:88**
- Court-ordered mediation, § **3:88**
- Criminal cases, § **3:87**

**MEDIATION—Cont'd**

Earthquake claims, § 3:86  
Legislation, § 3:85  
Mediator/arbitrators, § 3:34  
Voluntary, § 3:89

**MEETING OF THE MINDS**

Contracts, § 1:11

**MINORITY AND WOMEN  
BUSINESS ENTERPRISES**

Public Contracts, this index

**MISREPRESENTATION**

Fraud and Deceit, this index

**MODIFICATION OR CHANGE**

Contracts, this index  
Home improvement contracts, § 2:56

**MOLD EXCLUSION**

Property insurance, § 5:225

**MOST RESPONSIBLE BIDDER**

Public contracts, § 7:18

**MUTUAL ASSENT**

Contracts, this index

**MUTUALITY**

Contracts, § 1:10

**MUTUAL MISTAKE**

Contracts, § 1:39

**NECESSARY AND  
INDISPENSABLE PARTIES**

Defects in construction, § 5:21

**NEGLIGENCE**

Defects in Construction, this index  
Insurance, this index  
Public contracts, delay damages,  
§ 7:97

**“NO DAMAGES FOR DELAY”  
CLAUSES**

Contracts, § 1:30, 1:93

**NOTICES**

Contracts, this index  
Public contracts, subcontractors and  
suppliers, § 8:25  
Stop Payment Notices, this index

**OCCUPANCY**

Prime contracts, § 2:13

**OFFERS**

Contracts, § 1:13

**OFFSET OF EARNINGS**

Licenses of contractors, § 4:42

**ORAL CONTRACTS**

Contracts, this index

**OR EQUAL REQUIREMENTS**

Public contracts, § 7:53, 7:54

**OSHA COMPLIANCE**

Subcontracts, § 2:112  
Unlicensed contractor, liability of  
owner who employs, § 4:61

**OUT-OF-STATE COUNSEL**

Arbitration hearings, § 3:47

**OUT-OF-STATE WORK**

Licenses of contractors, § 4:37

**OUTREACH PROGRAM**

Public contracts, minority and  
women business enterprises,  
§ 7:42

**OWNER-BUILDER EXEMPTION**

Licenses of contractors, § 4:27

**PAROL EVIDENCE RULE**

Contracts, § 1:31 to 1:33

**PARTIES**

Class Actions, this index  
Standing, this index

**PARTISAN AND NEUTRAL  
ARBITRATORS**

Generally, § 3:30

**PARTNERS**

Arbitration award, general partner  
bound by, § 3:66  
Public contracts, domestic partner  
ordinance, rejection of low bid  
based on, § 7:21

**PART PERFORMANCE**

Contracts, § 1:57



## INDEX

### **PASS-THROUGH CLAIMS**

Contracts, § 1:83, 2:73  
Public contracts, § 7:107

### **PAY-IF-PAID CLAUSES**

Generally, § 1:36  
Mechanics liens, stop payment  
notices and payment bonds,  
releases, § 6:79, 6:80  
Public contracts, subcontractors and  
suppliers, § 8:1

### **PAYMENT BONDS**

Mechanics Liens, Stop Payment  
Notices and Payment Bonds,  
this index

### **PAYROLL TAXES**

Generally, § 9:12

### **PAY-WHEN-PAID CLAUSE**

Contracts, § 1:35, 2:97

### **PECULIAR RISK DOCTRINE**

Defects in Construction, this index

### **PENALTIES**

Prevailing wages, § 9:36, 9:38  
Public Contracts, this index  
Truth-in-lending, § 9:19

### **PERFORMANCE BONDS**

Insurance, duty to defend, § 5:218  
Public contracts, § 7:114

### **PERMITS**

Failure to obtain, Contractors' State  
License Law, willful violation,  
§ 2:78  
Subcontracts, § 2:78, 2:103

### **PERSONAL LIABILITY**

Contracts, § 1:34

### **PERSONAL PROPERTY**

Mechanics Liens, Stop Payment  
Notices and Payment Bonds,  
this index

### **PIPELINES**

Defects in construction, § 5:73  
Insurance, leaks, § 5:178

### **PLAN ROOMS**

Public contracts, competitive bidding,  
§ 7:3

### **PLUMBING OFFICIALS**

Defects in construction, liability of  
association for negligence,  
§ 5:85

### **POLLUTION EXCLUSION**

Property insurance, § 5:233

### **PREAMBLE**

Prime contracts, § 2:3

### **PREFERENTIAL PAYMENTS**

Bankruptcy, § 9:26

### **PRELIMINARY NOTICE**

Mechanics Liens, Stop Payment  
Notices and Payment Bonds,  
this index

### **PRESIDENT OF CONTRACTOR**

Defects in construction, personal  
liability, § 5:80

### **PRESUMPTIONS**

Bias, arbitrators, § 3:37

### **PREVAILING WAGES**

Generally, § 9:31 to 9:38  
Back pay and penalties, § 9:36, 9:38  
Debarment for violations, § 9:37  
Due process, § 9:32  
ERISA preemption, § 9:35  
Private projects, § 9:33  
Public Contracts, this index

### **PRIME CONTRACTS**

Contracts, this index

### **PRINCIPAL AND AGENT**

Agents, this index

### **PRIORITIES**

Mechanics Liens, Stop Payment  
Notices and Payment Bonds,  
this index

### **PRIVATE STATUTES OF LIMITATION**

Defects in construction, § 5:150

**PRIVETTE DOCTRINE**

General contractor protected,  
Privette-Toland, § 5:108  
Liability for negligence, protection  
from, § 5:112  
Peculiar Risk Doctrine, § 5:105  
Privette-Toland, § 5:107, 5:108

**PRIVITY**

Contracts, § 1:7  
Defects in Construction, this index

**PROCESSING OF CLAIM**

Defects in construction, fraud and  
deceit, § 5:7

**PRODUCTS-COMPLETED  
OPERATIONS**

Insurance, § 5:182 to 5:184

**PROFESSIONAL SERVICES  
EXCLUSION**

Insurance, § 5:186

**PROGRESSIVE INJURY**

Defects in construction, statutes of  
limitation and repose, § 5:127

**PROGRESS OF WORK**

Contracts, this index

**PROGRESS RELEASE FORMS**

Mechanics liens, stop payment  
notices and payment bonds,  
§ 6:74

**PROMISSORY ESTOPPEL**

Contracts, this index

**PROMISSORY NOTES**

Licenses of contractors, § 4:51

**PROMPT PAYMENTS**

Contracts, this index  
Public Contracts, this index

**PROPERTY INSURANCE**

Insurance, this index

**PROPOSITION 209**

Public contracts, minority and  
women business enterprises,  
§ 7:45, 7:46

**PROTECTION OF WORK**

Subcontracts, § 2:81

**PROTOCOLS**

Contracts, § 1:2

**PROVISIONAL REMEDIES**

Arbitration, this index

**PUBLIC AGENCIES**

Arbitration, § 3:8  
Contracts, this index  
Defects in Construction, this index  
Mechanics liens, stop payment  
notices and payment bonds,  
§ 6:41, 6:42  
Public Contracts, this index

**PUBLIC CONTRACTS**

Generally, § 7:1 to 7:118, 8:1 to 8:25  
Abandonment theory, extra work,  
§ 7:77  
Affirmative action, minority and  
women business enterprises,  
§ 7:47  
Apportionment, liquidated damages,  
§ 7:91, 7:92  
Arbitration  
local agency contracts, § 7:103  
state contracts, § 7:102  
Architects, § 7:7  
Attorneys fees, § 7:116  
Attorneys' fees, payment bonds,  
subcontractors and suppliers,  
§ 8:14  
Award to other than low bidder,  
§ 7:12  
Bids and bidding  
competitive bidding, below  
delay potential as excusing com-  
petitive bidding, § 7:24  
domestic partner ordinance, rejection of low bid based on,  
§ 7:21  
enforcement of subcontractor's  
bid, subcontractors listing  
law, § 7:75  
highest responsible bidder, § 7:17  
irresponsible bidder, § 7:22  
low bidder, below  
most responsible bidder, § 7:18

**PUBLIC CONTRACTS—Cont'd**

- Bids and bidding—Cont'd
  - nonresponsive bid, rejection of, § 7:20
  - qualification, § 7:26
  - rejection of all bids by public agency, § 7:13
  - restraint of trade, bid depository plan as, § 7:25
  - rigging of bids, § 7:10
  - second low bidder, cause of action for, § 7:16
  - withdrawal of bid by contractor, § 7:14
- Bonds. Subcontractors and suppliers, below
- Bribery to obtain contract, § 7:36
- Catalog, misrepresentations in, False Claims Act, § 7:110
- Change order for excavation, § 7:38
- Charter cities, § 7:34
- Claims against public entities
  - generally, § 7:104 to 7:115
  - breach of contract, § 7:105
  - False Claims Act, below
  - pass-through claims, § 7:107
  - performance bonds, § 7:114
  - qui tam plaintiff, original source, § 7:115
  - threatening letters, § 7:106
- Clerical errors, subcontractors listing law, § 7:69
- Competitive bidding
  - generally, § 7:1, 7:2
  - exceptions, § 7:5
  - exemptions, § 7:6
  - plan rooms, § 7:3
  - re-codification, § 7:4
- Conflict of interest, § 7:117
- Construction of public contracts, § 7:50
- County contracts, extra work, § 7:78, 7:84
- Damages
  - delay damages, below
  - liquidated damages, below
- Debarment, § 7:23

**PUBLIC CONTRACTS—Cont'd**

- Delay damages
  - generally, § 7:87, 7:93
  - legislation, § 7:95, 7:96
  - negligence, delay caused by, § 7:97
  - no damage for delay clauses, § 7:94 to 7:96
- Delay potential as excusing competitive bidding, § 7:24
- Design-build-value engineering, § 7:33
- Design professionals
  - architects and engineers, § 7:7
  - indemnity, § 7:8
- Domestic partner ordinance, rejection of low bid based on, § 7:21
- Effect of award, § 7:9
- Enforcement of claim arising from illegally awarded subcontract, subcontractors listing law, § 7:71
- Enforcement of subcontractor's bid, subcontractors listing law, § 7:75
- Engineers
  - generally, § 7:7
  - extra work, § 7:85
- Equal protection, minority and women business enterprises, § 7:41 to 7:44
- ERISA preemption, stop payment notices, subcontractors and suppliers, § 8:3
- Estoppel to accept., § 7:15
- Extra work
  - generally, § 7:37, 7:76 to 7:86
  - abandonment theory, § 7:77
  - county contracts, § 7:78, 7:84
  - engineer, determination by, § 7:85
  - hazardous materials, § 7:79
  - implied representations, § 7:82
  - implied warranty, § 7:83
  - lost profit when work deleted, recovery of, § 7:86
  - nondisclosure, § 7:81
  - warranty of plans and information, § 7:80

**PUBLIC CONTRACTS—Cont'd**

False Claims Act  
     generally, § 7:108 to 7:113  
     catalog, misrepresentations in, § 7:110  
     litigation privilege, § 7:112  
     prevailing wages, § 7:111  
     reckless disregard, § 7:109  
 Force account, § 7:48  
 Formation, generally, § 7:1 et seq.  
 Good faith efforts requirement, minority and women business enterprises, § 7:41  
 Hazardous materials, extra work, § 7:79  
 Hearings, subcontractors listing law, § 7:73  
 Highest responsible bidder, § 7:17  
 Implied covenants, § 7:51  
 Implied representations, extra work, § 7:82  
 Implied warranty, extra work, § 7:83  
 Inconsequential irregularity, § 7:29  
 Indemnity, design professionals, § 7:8  
 Independent remedy, payment bonds, subcontractors and suppliers, § 8:18  
 Insurance requirements, § 7:56  
 Interest on funds subject to stop payment notice, subcontractors and suppliers, § 8:11  
 Invalid contracts, recovery of costs, § 7:118  
 Irresponsible bidder, § 7:22  
 Job order contracts, § 7:32  
 Judgment for lost bonding capacity, § 7:101  
 Leases, § 7:49  
 Limitation of actions, payment bonds, subcontractors and suppliers, § 8:16, 8:17  
 Liquidated damages  
     generally, § 7:89 to 7:92  
     apportionment, § 7:91, 7:92  
 Listing law. Subcontractors listing law, below  
 Litigation privilege, False Claims Act, § 7:112

**PUBLIC CONTRACTS—Cont'd**

Lost profit when work deleted, recovery of, § 7:86  
 Low bidder  
     award to other than low bidder, § 7:12  
     remedies of, § 7:19  
 Manipulating alternates, § 7:11  
 Minority and women business enterprises  
     generally, § 7:39  
     affirmative action, standing to sue, § 7:47  
     equal protection, § 7:41 to 7:44  
     good faith efforts requirement, § 7:41  
     outreach program, § 7:42  
     proposition 209, § 7:45, 7:46  
 Most responsible bidder, § 7:18  
 Negligence, delay damages, § 7:97  
 No damage for delay clauses, § 7:94 to 7:96  
 Nondisclosure, extra work, § 7:81  
 Nonresponsive bid, rejection of, § 7:20  
 Notice of progress payments, subcontractors and suppliers, § 8:25  
 Oral contracts, § 7:27  
 Or equal requirements, § 7:53, 7:54  
 Outreach program, minority and women business enterprises, § 7:42  
 Pass-through claims, § 7:107  
 Pay-if-paid clauses, subcontractors and suppliers, § 8:1  
 Payment  
     generally, § 7:57  
     bonds. Subcontractors and suppliers, below  
 Penalties  
     generally, § 7:88  
     subcontractors listing law, § 7:70  
 Performance bonds, § 7:114  
 Plan rooms, competitive bidding, § 7:3  
 Preliminary stop payment notice, subcontractors and suppliers, § 8:9

## INDEX

### **PUBLIC CONTRACTS—Cont'd**

- Prequalification, § 7:30
- Prevailing wages
  - generally, § 7:58 to 7:62
  - determination of wage rates, § 7:59
- False Claims Act, § 7:111
- limitations, § 7:60
- worker cause of action, § 7:62
- Private infrastructure development, § 7:31
- Prompt payments
  - generally, § 7:63
  - subcontractors and suppliers, below
- Proposition 209, minority and women business enterprises, § 7:45, 7:46
- Qualification, § 7:26
- Qui tam plaintiff, original source, § 7:115
- Reckless disregard, False Claims Act, § 7:109
- Recovery of costs, invalid contracts, § 7:118
- Rejection of all bids by public agency, § 7:13
- Releases. Subcontractors and suppliers, below
- Restraint of trade, bid depository plan as, § 7:25
- Rigging of bids, § 7:10
- Roofing, or equal requirements, § 7:54
- Second low bidder, cause of action for, § 7:16
- Service of stop payment notice, subcontractors and suppliers, § 8:5
- Sham bonds, § 7:99, 7:100
- Standing to sue, minority and women business enterprises, § 7:47
- Stop payment notices. Subcontractors and suppliers, below
- Streets work, claims under 1911 act, § 8:23
- Subcontractors and suppliers
  - generally, § 8:1 to 8:25

### **PUBLIC CONTRACTS—Cont'd**

- Subcontractors and suppliers
  - Cont'd
  - attorneys' fees, payment bonds, § 8:14
  - ERISA preemption, stop payment notices, § 8:3
  - independent remedy, payment bonds, § 8:18
  - interest on funds subject to stop payment notice, § 8:11
  - limitation of actions, payment bonds, § 8:16, 8:17
  - listing law. Subcontractors listing law, below
  - notice of progress payments, § 8:25
  - pay-if-paid clauses, § 8:1
  - payment bonds
    - generally, § 8:13
    - attorneys' fees, § 8:14
    - independent remedy, § 8:18
    - limitation of actions, § 8:16, 8:17
    - release of claims, § 8:20
    - surety bad faith, § 8:15
  - preliminary stop payment notice, § 8:9
  - prompt payments
    - generally, § 8:24
    - notice of progress payments, § 8:25
  - release of claims
    - generally, § 8:20
    - payment bonds, § 8:20
  - release of funds from the effect of stop payment notice, § 8:12
  - service of stop payment notice, § 8:5
  - stop payment notices
    - generally, § 8:2 to 8:12
    - action on notice, § 8:7
    - contents, § 8:4
    - effect of notice, § 8:10
    - ERISA, preemption by, § 8:3
    - five day notice, § 8:8
    - interest on funds subject to notice, § 8:11

**PUBLIC CONTRACTS—Cont'd**

- Subcontractors and suppliers
  - Cont'd
  - stop payment notices—Cont'd
  - liability of public agency to surety, § 8:21
  - preliminary notice, § 8:9
  - release of funds from the effect of notice, § 8:12
  - service of notice, § 8:5
  - six-month period, commencement of, § 8:17
  - time limit, § 8:6
  - streets work, claims under 1911 act, § 8:23
  - subcontractor's bonds
    - generally, § 8:19
    - claim on bond, § 8:22
  - surety bad faith, payment bonds, § 8:15
- Subcontractors listing law
  - generally, § 7:64 to 7:75
  - claim of subcontractor that was substituted out, § 7:68
  - clerical errors, § 7:69
  - enforcement of claim arising from illegally awarded subcontract, § 7:71
  - enforcement of subcontractor's bid, § 7:75
  - failure to list locations, § 7:65
  - hearings, § 7:73
  - minority, women and veterans listing law, § 7:74
  - penalties, § 7:70
  - portion of work vs. percentage of work, § 7:72
  - statutory rights, § 7:67
  - substantial compliance, two day written notice requirement, § 7:66
- Substantial compliance, subcontractors listing law, § 7:66
- Suppliers. Subcontractors and suppliers, above
- Terms required or prohibited by law, § 7:55
- Threatening letters, § 7:106
- Total cost theory, § 7:98

**PUBLIC CONTRACTS—Cont'd**

- Unlicensed contractor, citation of public employee for award of contract to, § 7:35
- Veterans, subcontractors listing law, § 7:74
- Void contract, wrongful award, § 7:28
- Warranty of plans and information, extra work, § 7:80
- Withdrawal of bid by contractor, § 7:14
- Women
  - minority and women business enterprises, above
  - subcontractors listing law, § 7:74
- Written notice requirement, § 7:52

**PUBLIC POLICY**

- Arbitration or submission, agreement for, § 3:16

**PUBLIC PROPERTY**

- Mechanics liens, stop payment notices and payment bonds, § 6:28

**PUNITIVE DAMAGES**

- Arbitration, § 3:64, 3:84
- Defects in Construction, this index
- Insurance, this index

**QUANTUM MERUIT**

- Contracts, § 1:96

**QUI TAM PLAINTIFFS**

- Public contracts, original source, § 7:115

**RACE DISCRIMINATION**

- Licenses of contractors, pursuit of claim by unlicensed contractor, § 4:44

**RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS**

- Generally, § 9:43

**RAIN DAMAGE**

- Property insurance, § 5:232

**READING CONTRACTS**

- Generally, § 1:14



## INDEX

### **REASONABLENESS RULE**

Surface waters, § 9:6

### **RECEIVERS**

Arbitration, § 3:51

### **RECKLESS DISREGARD**

Public contracts, False Claims Act,  
§ 7:109

### **RECREATIONAL USE STATUTE**

Defects in construction, § 5:83

### **REGISTERED PROFESSIONAL ENGINEERS**

Licenses of contractors, construction  
managers, § 4:34

### **REIMBURSEMENT CHARGES**

Subcontracts, § 2:88

### **RELEASES**

Contracts, this index  
Mechanics Liens, Stop Payment  
Notices and Payment Bonds,  
this index  
Public Contracts, this index

### **RELIANCE ON MISREPRESENTATIONS**

Defects in construction, fraud and  
deceit, § 5:10

### **REPAIRS**

Contracts, this index

### **REPLACEMENT**

Arbitrators, § 3:31

### **REPLACEMENT COST**

Property insurance, § 5:243

### **REPOSE, STATUTES OF**

Defects in Construction, this index

### **REPOSSESSION**

Contracts, this index

### **RESCISSION**

Arbitration, § 3:12  
Contracts, § 1:69  
Truth-in-lending, § 9:17

### **RESPONSIBLE MANAGING EMPLOYEE**

Licenses of contractors, § 4:11

### **RESTITUTION**

Contracts, § 1:70

### **RESTRAINT OF TRADE**

Public contracts, bid depository  
plans, § 7:25

### **RETAINED LIMITS**

Insurance, § 5:198

### **RETENTIONS**

Contracts, payments, § 1:110

### **RICO**

Generally, § 9:43

### **RIGGING OF BIDS**

Public contracts, § 7:10

### **RIGHT TO REPAIR ACT**

Class actions under, § 5:2  
Deceit in processing claim, § 5:7  
Defects in construction, § 5:1

### **ROOFING**

Public contracts, or equal require-  
ments, § 7:54  
Third-party beneficiaries, § 1:9

### **ROT EXCLUSION**

Property insurance, § 5:225

### **RUMBLE AT JOBSITE**

Defects in construction, liability of  
public agencies, § 5:122

### **RURAL FIRE PREVENTION WORK**

Licenses of contractors, § 4:6

### **SAFETY**

Defects in construction, responsibil-  
ity of prime subcontractor,  
§ 5:68  
Manslaughter due to a safety viola-  
tion, § 9:50

### **SB 800**

Generally, § 5:1  
Liability for residential construction  
defects, § 5:57

**SB 800—Cont'd**

Statutes of repose, § 5:153

**SELF EXECUTING AGREEMENTS**

Arbitration, § 3:10

**SERVICE AND REPAIR  
CONTRACTS**

Contracts, this index

**SERVICE OF PAPERS**

Mechanics liens, stop payment  
notices and payment bonds, pre-  
liminary notice, § 6:60

Public contracts, stop payment  
notice, subcontractors and sup-  
pliers, § 8:5

**SEVERABILITY**

Contracts, § 1:56

**SHAM BONDS**

Public contracts, § 7:99, 7:100

**SHOP STEWARDS**

Construction sites, § 9:21  
False imprisonment, § 9:22

**SIGNATURES**

Defects in Construction, this index

**SINGLE-FAMILY DWELLINGS**

Contracts, this index

**SITE IMPROVEMENTS**

Mechanics Liens, Stop Payment  
Notices and Payment Bonds,  
this index

**SLANDER OF TITLE**

Mechanics liens, stop payment  
notices and payment bonds,  
§ 6:26

**SMALL BUILDERS**

Defects in construction, strict  
liability, § 5:27

**SOILS DESIGN AND NUISANCE**

Defects in construction, design  
professionals, § 5:99

**SONG-BEVERLY CONSUMER  
WARRANTY ACT**

Defects in construction, building  
materials supplied by contractor,  
§ 5:49

**SPEED OF PROCEEDINGS**

Arbitration, § 3:72

**SPOLIATION OF EVIDENCE**

Defects in construction, § 5:81

**STANDING**

Defects in Construction, this index  
Public contracts, minority and  
women business enterprises,  
§ 7:47

**STATE AGENCIES**

Contracts, prompt payment, § 1:114

**STATUTES OF LIMITATION**

Limitation of Actions, this index

**STAYS**

Arbitration, this index

**STIGMA**

Defects in construction, damages,  
§ 5:15

**STOP PAYMENT NOTICES**

Mechanics Liens, Stop Payment  
Notices and Payment Bonds,  
this index  
Public Contracts, this index

**STOP WORK**

Contracts, this index

**STREETS WORK**

Public contracts, claims under 1911  
act, § 8:23

**STRICT COMPLIANCE**

Mechanics liens, stop payment  
notices and payment bonds, pre-  
liminary notice, § 6:62

**STRICT LIABILITY**

Defects in Construction, this index

**SUBCONTRACTS AND  
SUBCONTRACTORS**

Arbitration, § 3:78

## INDEX

### **SUBCONTRACTS AND**

#### **SUBCONTRACTORS—Cont'd**

- Bankruptcy, § 9:28
- Contracts, this index
- Defects in Construction, this index
- Licenses of contractors, § 4:54
- Mechanics liens, stop payment notices and payment bonds, § 6:8
- Public Contracts, this index

### **SUBROGATION**

- Contracts, § 1:60, 2:27
- Mechanics liens, stop payment notices and payment bonds, § 6:93
- Property insurance, § 5:241, 5:242

### **SUBSTANDARD WORK**

- Insurance, § 5:176, 5:177

### **SUBSTANTIAL COMPLIANCE**

- Licenses of contractors, § 4:45
- Mechanics liens, stop payment notices and payment bonds, notice of completion, § 6:37
- Public contracts, subcontractors listing law, § 7:66

### **SUBSTANTIAL PERFORMANCE**

- Contracts, § 1:55
- Defects in construction, statutes of limitation and repose, § 5:130, 5:137

### **SUE AND LABOR CLAUSE**

- Property insurance, § 5:239

### **SUMMARY JUDGMENT**

- Arbitration, § 3:45

### **SUMMARY PROCEEDINGS**

- Mechanics liens, stop payment notices and payment bonds, § 6:84

### **SUPERVISORS**

- Licenses of contractors, § 4:30

### **SUPPLIERS**

- Material Suppliers, this index

### **SURETIES**

- Arbitration, § 3:79

### **SURETIES—Cont'd**

- Contracts, prompt payment, § 1:111
- Insurance, bad faith, § 5:195
- Licenses of contractors, § 4:3

### **SURFACE WATERS**

- Generally, § 9:5 to 9:8
- Floodwaters, § 9:7, 9:8
- Reasonableness rule, § 9:6
- 300 year floods, reasonable design, § 9:8

### **TAXES**

- Business License Taxes, this index
- Licenses of contractors, failure to pay taxes, § 4:18
- Prime contracts, § 2:18

### **TECHNICAL EVIDENCE**

- Arbitration, § 3:70

### **TEMPORARY IMPOSSIBILITY**

- Contracts, § 1:61

### **TERMINATION OF CONTRACT**

- Arbitration, § 3:11

### **THIRD PARTIES**

- Defects in construction, residential construction, § 5:65

### **THIRD-PARTY BENEFICIARIES**

- Contracts, this index
- Defects in construction, equitable indemnity and comparative fault, § 5:167

### **THREATENING LETTERS**

- Public contracts, § 7:106

### **TIME**

- Arbitration awards, § 3:53
- Contracts, this index
- Limitation of Actions, this index
- Mechanics Liens, Stop Payment Notices and Payment Bonds, this index

### **TOLLING**

- Arbitration, commencement of, § 3:29

### **TOTAL COST THEORY**

- Public contracts, § 7:98

**TRADE STANDARDS**

Good and workmanlike condition,  
willful departure from, § 4:68

**TRADE UNIONS**

Subcontracts, § 2:102

**TRAFFIC**

Defects in Construction, this index

**TREES**

Licenses of contractors, compliance  
with Cal OSHA regulations,  
§ 4:61

Roots, cutting of, § 9:9

**TRESPASS**

Defects in construction, dust, § 5:14  
Insurance, § 5:205

**TRUST DEEDS**

Mechanics liens, stop payment  
notices and payment bonds,  
priorities, § 6:99, 6:100

**TRUST FUND THEORY**

Mechanics liens, stop payment  
notices and payment bonds,  
equitable lien claims, § 6:121

**TRUTH-IN-LENDING**

Generally, § 9:13 to 9:19  
Advertising, § 9:18  
Annual percentage rate, § 9:16  
Disclosures, § 9:14  
Federal Truth in Lending Act, gener-  
ally, § 2:48  
Finance charges, § 9:15  
Penalties, § 9:19  
Rescission, § 9:17

**UNAUTHORIZED AGENTS**

Contracts, waiver by conduct, § 1:44

**UNBUILT PROJECTS**

Design professionals lien, § 6:10

**UNCLEAN HANDS**

Mechanics liens, stop payment  
notices and payment bonds,  
§ 6:3

**UNCONSCIONABILITY**

Arbitration agreement, § 3:14, 3:15

**UNCONSCIONABILITY—Cont'd**

Contracts, § 1:28

**UNFAIR COMPETITION**

Licenses of contractors, § 4:22

**UNILATERAL MISTAKE**

Contracts, § 1:38

**UNJUST ENRICHMENT**

Contracts, this index

**USURY**

Contracts, § 1:80

**UTTERLY IRRATIONAL**

Arbitration, awards, § 3:58

**VACATING OF AWARD**

Arbitration, § 3:68

**VALUATION**

Insurance, support by substantial evi-  
dence, good faith settlement,  
§ 5:250

**VENUE**

Arbitration or submission, agreement  
for, § 3:7

**VETERANS**

Public contracts, subcontractors list-  
ing law, § 7:74

**VIEW LOTS**

Defects in construction, § 5:12

**VOID CONTRACTS**

Unlicensed contractors, § 4:2

**VOLUNTARY PAYMENTS**

Insurance, duty to defend, § 5:215

**WAGES**

Prevailing Wages, this index

**WAIVER**

Arbitration, this index  
Contracts, this index  
Defects in Construction, this index  
Subrogation, property insurance,  
§ 5:242

**WARRANTIES**

Contracts, § 1:3  
Defects in Construction, this index

## INDEX

### **WARRANTIES—Cont'd**

- Implied Warranties, this index
- Licenses of contractors, § 4:41
- Public contracts, warranty of plans and information, extra work, § 7:80

### **WATER**

- Clean Water Act, § 9:42
- Groundwater contamination and trespass, § 5:205
- Rain damage, property insurance, § 5:232
- Surface Waters, this index

### **WET OR DRY ROT EXCLUSION**

- Property insurance, § 5:225

### **WILD CLAUSES**

- Contracts, § 2:1

### **WILLFUL DIVERSION**

- Diversion of funds, § 9:3

### **WILLFUL MISCONDUCT**

- Defects in Construction, this index

### **WITHDRAWAL OF BIDS**

- Subcontracts, § 2:69

### **WOMEN**

- Public Contracts, this index

### **WORKERS' COMPENSATION**

- Compensable injury, proving, § 4:16
- Licenses of contractors, § 4:15
- Proving a compensable injury, § 4:16

### **WORK EXCLUSION**

- Insurance, § 5:181, 5:185