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DIVISION 4. GENERAL PROVISIONS [3274 - 9566] (*Heading of Division 4 amended by Stats. 1988, Ch. 160, Sec. 16.)*

PART 6. WORKS OF IMPROVEMENT [8000 - 9566] (*Part 6 added by Stats. 2010, Ch. 697, Sec. 20.)*

TITLE 2. PRIVATE WORKS OF IMPROVEMENT [8160 - 8848] (*Title 2 added by Stats. 2010, Ch. 697, Sec. 20.)*

CHAPTER 7. Security for Large Project [8700 - 8730] (*Chapter 7 added by Stats. 2010, Ch. 697, Sec. 20.)*

ARTICLE 3. Form of Security [8720 - 8730] (*Article 3 added by Stats. 2010, Ch. 697, Sec. 20.)*

8720. An owner shall provide security by any of the following means:

- (a) A bond that satisfies Section 8722.
- (b) An irrevocable letter of credit that satisfies Section 8724.
- (c) An escrow account that satisfies Section 8726.

(*Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.*)

8722. A bond under this chapter shall satisfy all of the following requirements:

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

(*Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.*)

8724. An irrevocable letter of credit under this chapter shall satisfy all of the following requirements:

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

(*Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.*)

8726. An escrow account under this chapter shall satisfy all of the following requirements:

- (a) The account shall be designated as a "construction security escrow account."
- (b) The account shall be located in this state and maintained with an escrow agent licensed under the Escrow Law, Division 6 (commencing with Section 17000) of the Financial Code, or with any person exempt from the Escrow Law under paragraph (1) or (3) of subdivision (a) of Section 17006 of the Financial Code.
- (c) The owner shall deposit funds in the account in the amount provided in Section 8728. This chapter does not require a construction lender to agree to deposit proceeds of a construction loan in the account.

(d) The owner shall grant the direct contractor a perfected, first priority security interest in the account and in all funds deposited by the owner in the account and in their proceeds, established to the reasonable satisfaction of the direct contractor, which may be by a written opinion of legal counsel for the owner.

(e) The funds on deposit in the account shall be the sole property of the owner, subject to the security interest of the direct contractor. The owner and the direct contractor shall instruct the escrow holder to hold the funds on deposit in the account for the purpose of perfecting the direct contractor's security interest in the account and to disburse those funds only on joint authorization of the owner and the direct contractor, or pursuant to a court order that is binding on both of them.

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)

8728. The following provisions govern a deposit to or disbursement from a construction security escrow account under this chapter:

(a) Before the commencement of work the owner shall make an initial deposit to the account in an amount not less than 15 percent of the contract price for the work of improvement or, if the work of improvement is to be substantially completed within six months after the commencement of work, not less than 25 percent of the contract price.

(b) If the contract provides for a retention to be withheld from a periodic payment to the direct contractor, the owner shall deposit to the account the amount withheld as retention at the time the owner makes the corresponding payment to the direct contractor from which the retention is withheld.

(c) The amount required to be maintained on deposit shall not exceed the total amount remaining to be paid to the direct contractor pursuant to the contract or as adjusted by agreement between the owner and the direct contractor. If the amount on deposit equals or exceeds the total amount remaining to be paid to the direct contractor, the owner and the direct contractor shall authorize disbursement to the direct contractor for progress payments then due the direct contractor, but a party is not obligated to authorize disbursement that would cause the amount remaining on deposit following the disbursement to be less than the total amount remaining to be paid to the direct contractor.

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

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)

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

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)