

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Mechanics Liens in Common Interest Developments

December 2016

California Law Revision Commission
c/o King Hall Law School
Davis, CA 95616
www.clrc.ca.gov

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

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December 1, 2016

To: The Honorable Edmund G. Brown, Jr.
Governor of California, and
The Legislature of California

The Commission sees three problems with the application of the mechanics lien remedy to a work of improvement in a common interest development:

- Mechanics lien procedures that require the delivery of a notice to the “owner” of improved property may be confusing and burdensome where the improved property is common area.
- Special mechanics lien rules for the authorization of work in a condominium project (one type of common interest development) should also apply to other types of common interest developments.
- The law is unclear as to whether a lien release bond can be used by a condominium owner to release the owner’s property from a mechanics lien recorded against two or more condominiums.

The Commission recommends reforms to address those problems. This recommendation was prepared pursuant to Resolution Chapter 150 of the Statutes of 2016.

Respectfully submitted,

Susan Duncan Lee
Chairperson

MECHANICS LIENS IN COMMON INTEREST DEVELOPMENTS

A mechanics lien is a special type of creditor's remedy, which is established in the state Constitution.¹ It provides a lien right for those who have "bestowed labor or furnished material" on a work of improvement of real property.² Procedures to implement the exercise of the lien right are provided in the Civil Code.³

A common interest development ("CID") is a real property development characterized by (1) separate ownership of a lot or unit (or a right of exclusive occupancy of a unit) that is coupled with an interest in common property, (2) covenants, conditions, and restrictions that limit use of both the common area and separate ownership interests, and (3) management of common property and enforcement of restrictions by an owners' association. CIDs include condominiums, community apartment projects, stock cooperatives, and planned unit developments.⁴

The Commission sees three problems with the application of the mechanics lien remedy to a work of improvement in a CID:

- Mechanics lien procedures that require the delivery of a notice to the "owner" of improved property may be confusing and burdensome where the improved property is common area.

1. Cal. Const. art XIV, § 3 ("Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor

2. *Id.*

3. Civ. Code §§ 8400-8494.

4. Common interest developments can be residential, mixed-use, or entirely commercial or industrial. CIDs that include residential units are governed by the Davis-Stirling Common Interest Development Act. See Civ. Code §§ 4000-6150. CIDs that do not contain residential units are governed by the Commercial and Industrial Common Interest Development Act. See Civ. Code §§ 6500-6876. For ease of reference, the discussion in this recommendation refers primarily to the first of the two Acts.

- Special mechanics lien rules for the authorization of work in a condominium project (one type of common interest development) should also apply to other types of common interest developments.
- It is unclear whether a lien release bond can be used by a condominium owner to release the owner's property from a mechanics lien recorded against two or more condominiums.

Those problems, and the Commission's recommended reforms, are discussed in detail below.

NOTICE TO "OWNER" OF COMMON AREA

In general, the enforcement of a mechanics lien claim is contingent on the claimant having given timely "preliminary notice" to the owner of the improved property.⁵ Mechanics lien law also requires that other important notices and claims be delivered to or served on the improved property's "owner."

It will often be difficult for a mechanics lien claimant to determine who is the "owner" of common area property in a CID. Depending on the form of CID, the common area may be owned by a corporation formed for that purpose, by the CID's association, or by all separate interest owners as tenants in common.⁶ Determining the precise form of ownership of the common area would require reference to complex governing documents that are held in the county recorder's office.

Uncertainty regarding the identity of the improved property's "owner" could lead to mistakes that could undermine the enforcement of an otherwise valid lien claim. Moreover, if the common area is owned jointly by all separate interest owners (who

5. Civ. Code §§ 8200, 8204, 8410. Some provisions authorize giving notice to the "reputed owner" of the improved property. That provides some flexibility but does not entirely cure the problem discussed here.

6. See Civ. Code §§ 4095 ("common area"), 4105 ("community apartment project"), 4125 ("condominium project"), 4175 ("planned development"), 4185 ("separate interest"), 4190 ("stock cooperative").

could number in the thousands), requiring notice to every owner could be unduly burdensome.

A relatively straightforward solution would be to provide that a CID's association is the owner's agent for receipt of mechanics lien notices and claims relating to the CID's common area. Delivery of a notice to the association would be deemed to satisfy the requirement that notice be given to the "owner" of the common area. The same would be true for claims that must be formally served on the "owner."⁷

This would eliminate uncertainty and error about who is the "owner" of the common area. It would also eliminate burdensome mass mailings where the common area happens to be owned by numerous separate interest owners, as tenants in common.

Assigning this function to the association also makes practical sense. Under existing law, the association is generally responsible for maintaining and improving the common area.⁸ Consequently, the association will typically be the party contracting and paying for a work of improvement on the common area.

The Commission recommends that the law be revised to designate the association as the agent for receipt of mechanics lien notices for work on the common area.⁹

To insure that separate interest owners are kept apprised of an imminent mechanics lien enforcement action that could affect the owners' property, the Commission also recommends that the association have the duty of promptly notifying the separate interest owners when a claim of lien is served on the association.¹⁰ The proposed law would require that the notice be given to each owner individually.

7. See Civ. Code § 8416.

8. See, e.g., Civ. Code § 4775.

9. See proposed Civ. Code § 8119 *infra*.

10. See proposed Civ. Code §§ 4620 & 6660 *infra*.

AUTHORIZATION OF WORK IN
CONDOMINIUM PROJECT

Claimants only have a valid mechanics lien right for work that has been authorized by the owner.¹¹ This presents a problem similar to the one discussed above. How can a claimant determine who is the “owner” of common area in a CID in order to secure the necessary authorization? If the common area is owned by separate interest owners as tenants in common, mechanics lien rights could be contingent on obtaining the express authorization of all separate interest owners (who can number in the thousands).

Civil Code Section 4615 provides a solution to this problem, *but only for a work of improvement in a condominium project*. It draws clear lines of authority for authorization of a work of improvement:

4615. (a) In a condominium project, no labor performed or services or materials furnished with the consent of, or at the request of, an owner in the condominium project or the owners’ agent or contractor shall be the basis for the filing of a lien against any other property of any other owner in the condominium project unless that other owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services. However, express consent shall be deemed to have been given by the owner of any condominium in the case of emergency repairs thereto.

(b) Labor performed or services or materials furnished for the common area, if duly authorized by the association, shall be deemed to be performed or furnished with the express consent of each condominium owner.

(c) The owner of any condominium may remove that owner’s condominium from a lien against two or more condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by the lien that is attributable to the owner’s condominium.

11. Civ. Code § 8404.

The Commission sees no policy reason for limiting those beneficial rules to condominium projects. With respect to the issues raised in Section 4615, there is nothing that distinguishes a condominium project from any other type of CID. Every type of CID has common area property, with some form of shared ownership. Consequently, every type of CID will face questions about who can authorize work on the common area and about the resulting mechanics lien liability. The answers provided in Section 4615 for condominium projects make equal sense for all types of CIDs.

For those reasons, the Commission recommends that Section 4615 be generalized to apply to all types of CIDs. The Commission also recommends similar revisions to Section 6658 (the parallel provision that governs commercial and industrial CIDs).¹²

USE OF LIEN RELEASE BOND IN COMMON INTEREST DEVELOPMENT

An owner of real property that is subject to a recorded mechanics lien claim, who disputes the correctness or validity of the claim, may release the property from the lien by obtaining and recording a lien release bond (for 125% of the claimed amount).¹³ The bond provides a source of funds for the satisfaction of any judgment enforcing the claim of lien. This allows the property owner to clear a disputed lien from title, without affecting the lien claimant's ability to be paid if the mechanics lien claim is eventually found to be valid and enforceable.

Under Civil Code Section 4615(c), if a mechanics lien claim is recorded against two or more condominiums, an owner of an affected condominium may remove that condominium from the lien by paying the lien claimant the fraction of the total sum secured by the lien that is attributable to the owner's condominium.

12. See proposed amendments to Civ. Code §§ 4615 & 6658 *infra*.

13. Civ. Code § 8424.

It is not clear whether Section 4615(c) would allow an owner to remove a condominium from a recorded lien claim by obtaining and recording a lien release bond for 125% of the fraction of the total sum secured by the lien that is attributable to the owner's condominium.

In order to avoid any uncertainty on that point, the Commission recommends that Section 4615(c) be revised to expressly provide that a mechanics lien release bond may be used, instead of payment, to remove a condominium from a mechanics lien claim recorded against two or more condominiums.¹⁴ The Commission also recommends similar revisions in Section 6658 (the parallel provision that governs commercial and industrial CIDS). These revisions of Sections 4615(c) and 6658(c) would likely be a clarification of existing law, rather than a substantive change.¹⁵ Moreover, the Commission sees no policy reason to preclude use of a mechanics lien release bond in the situation governed by these sections.

14. If Civil Code Section 4615 is generalized, as proposed in this recommendation, the clarification regarding lien release bonds would apply to all types of common interest developments, not just condominiums.

15. The provision that authorizes use of a mechanics lien release bond applies to any "owner of real property," which would include property in a common interest development. See Civ. Code § 8424.

PROPOSED LEGISLATION

TABLE OF CONTENTS

Civ. Code § 4615 (amended). Mechanics liens	751
Civ. Code § 4620 (added). Notice of claim of lien	752
Civ. Code § 6658 (amended). Mechanics liens	752
Civ. Code § 6660 (added). Notice of claim of lien	753
Civ. Code § 8119 (added). Agent for receipt of notice in common interest development	753

PROPOSED LEGISLATION

Civ. Code § 4615 (amended). Mechanics liens

SECTION 1. Section 4615 of the Civil Code is amended to read:

4615. (a) In a ~~condominium project~~ common interest development, no labor performed or services or materials furnished with the consent of, or at the request of, an owner in the ~~condominium project~~ common interest development or the owners' agent or contractor shall be the basis for the filing of a lien against any other property of any other owner in the ~~condominium project~~ common interest development unless that other owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services. However, express consent shall be deemed to have been given by the owner of any ~~condominium~~ separate interest in the case of emergency repairs thereto.

(b) Labor performed or services or materials furnished for the common area, if duly authorized by the association, shall be deemed to be performed or furnished with the express consent of each ~~condominium~~ separate interest owner.

(c) The owner of any ~~condominium~~ separate interest may remove that owner's ~~condominium~~ separate interest from a lien against two or more ~~condominium~~ separate interests or any part thereof by ~~payment to~~ doing either of the following:

(1) Pay the holder of the lien of the fraction of the total sum secured by the lien that is attributable to the owner's ~~condominium~~ separate interest.

(2) Record a lien release bond, pursuant to Section 8424, in an amount equal to 125 percent of the sum secured by the lien that is attributable to the owner's ~~condominium~~ separate interest.

Comment. Section 4615 is generalized to apply to all types of common interest developments.

Subdivision (c) is revised to make clear that a mechanics lien release bond may be used to remove a separate interest from a mechanics lien claim recorded against two or more separate interests.

Civ. Code § 4620 (added). Notice of claim of lien

SEC. 2. Section 4620 is added to the Civil Code, to read:

4620. If the association is served with a claim of lien pursuant to Part 6 (commencing with Section 8000), for a work of improvement on common area, the association shall promptly give individual notice to the members, pursuant to Section 4040.

Comment. Section 4620 is new. It requires prompt individual notice of a mechanics lien claim served on the association. See Section 4040 (individual notice). See also Section 8119 (with respect to work of improvement on common area, association is agent for receipt of mechanics lien notices and claims).

Civ. Code § 6658 (amended). Mechanics liens

SEC. 3. Section 6658 of the Civil Code is amended to read:

6658. (a) In a ~~condominium—project~~ common interest development, no labor performed or services or materials furnished with the consent of, or at the request of, an owner in the ~~condominium—project~~ common interest development or the owners' agent or contractor shall be the basis for the filing of a lien against any other property of any other owner in the ~~condominium—project~~ common interest development unless that other owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services. However, express consent shall be deemed to have been given by the owner of any ~~condominium~~ separate interest in the case of emergency repairs thereto.

(b) Labor performed or services or materials furnished for the common area, if duly authorized by the association, shall be deemed to be performed or furnished with the express consent of each ~~condominium~~ separate interest owner.

(c) The owner of any ~~condominium~~ separate interest may remove that owner's ~~condominium~~ separate interest from a lien against two or more ~~condominium~~ separate interests or any part thereof by ~~payment to~~ doing either of the following:

(1) Pay the holder of the lien ~~of~~ the fraction of the total sum secured by the lien that is attributable to the owner's ~~condominium~~ separate interest.

(2) Record a lien release bond, pursuant to Section 8424, in an amount equal to 125 percent of the sum secured by the lien that is attributable to the owner's separate interest.

Comment. Section 6658 is generalized to apply to all types of common interest developments.

Subdivision (c) is revised to make clear that a mechanics lien release bond may be used to remove a separate interest from a mechanics lien claim recorded against two or more separate interests.

Civ. Code § 6660 (added). Notice of claim of lien

SEC. 4. Section 6660 is added to the Civil Code, to read:

6660. If the association is served with a claim of lien pursuant to Part 6 (commencing with Section 8000), for a work of improvement on common area, the association shall promptly give individual notice to the members, pursuant to Section 6514.

Comment. Section 6660 is new. It requires prompt individual notice of a mechanics lien claim served on the association. See Section 6514 (individual notice). See also Section 8119 (with respect to work of improvement on common area, association is agent for receipt of mechanics lien notices and claims).

Civ. Code § 8119 (added). Agent for receipt of notice in common interest development

SEC. 5. Section 8119 is added to the Civil Code, to read:

8119. (a) With respect to a work of improvement on common area within a common interest development:

(1) The association is deemed to be an agent of the owners of separate interests in the common interest development, for all notices and claims required by this part.

(2) If any provision of this part requires the delivery or service of a notice or claim to or on the owner of common area property, the notice or claim may be delivered to or served on the association.

(b) For the purposes of this section, the terms "association," "common area," "common interest development," and "separate interest" have the meanings provided in Article 2 (commencing

with Section 4075) of Chapter 1 of Part 5 and Article 2 (commencing with Section 6526) of Chapter 1 of Part 5.3.

Comment. Section 8119 is new. It establishes the association of a common interest development as an agent for receipt of notices and claims for a work of improvement, but only with respect to work affecting the common area. See Section 8066 (agents). This section does not make the association an agent of a separate interest owner for work performed on the owner's separate interest.
