Study H-859 August 16, 2016

Memorandum 2016-45

Common Interest Developments: Mechanics Liens and Common Area (Draft Recommendation)

The Commission[1] has done extensive work on two different aspects of real property law, common interest developments ("CIDs") and mechanics liens. In the course of that prior work, the Commission noted a number of questions that could arise when a mechanics lien right is asserted against common area property in a common interest development.

In the memorandum that launched this study, the staff discussed those questions and proposed a number of possible reforms to address them.[2] The Commission took a fairly cautious approach to that memorandum, rejecting most of the staff's proposals as too ambitious. At a later meeting, it approved a tentative recommendation that included only a few fairly straightforward reforms:

- Provide that the association is the agent for receipt of mechanics lien notices and claims for a work of improvement on common area within a common interest development.[3] Require that the association give notice to its members when served with a claim of lien.[4]
- Generalize existing Civil Code Sections 4615(b) and 6658 (authorization of work on common area in condominium project) so that they apply to all common interest developments and not just condominiums.[5]

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See Memorandum 2016-14.

3. See proposed Civil Code § 8119.

4. See proposed Civil Code §§ 4620, 6660.

5. See Tentative Recommendation on *Mechanics Liens in Common Interest Developments* (June 2016).

The Commission received only one letter commenting on the tentative recommendation, from the California Land Title Association ("CLTA"). The letter is attached as an Exhibit. While CLTA is supportive of some parts of the tentative recommendation, it raises three issues:

- Should the association be the owners' agent for service of a claim of lien?
- Should lien claim liability for work on "exclusive use common area" be limited to the individual CID owner who authorized the work?
- Should CID owners be able to clear a lien on their share of joint liability for CID property by recording a lien release bond?

Those issues are discussed below.

A draft recommendation, based on the tentative recommendation, is attached to this memorandum for the Commission's review. The Commission needs to decide whether to approve the draft recommendation as a final recommendation, for publication and submission to the Legislature and Governor, with or without changes.

All further statutory references in this memorandum are to the Civil Code.

AUTHORIZATION OF WORK

The tentative recommendation would generalize existing Section 4615 (and Section 6658, the equivalent provision governing commercial and industrial CIDs), so that they apply to all CIDs and not just condominium projects. For ease of reference, the proposed changes to Section 4615 are set out below:

> 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 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.

CLTA expressly supports generalizing Section 4615.[6] Although CLTA does not mention the parallel reform to Section 6658, the staff sees no reason why the proposed improvement would not also be appropriate for commercial and industrial CIDs. **The staff recommends that the proposed changes to Section 4615 and 6658 be included in a final recommendation.**

SERVICE OF CLAIM OF LIEN

As discussed above, the tentative recommendation would designate a CID's association as the owners' agent for receipt of mechanics lien related notices and claims.[7] It would also require that the association provide notice to its members if it is served with a claim of lien.[8] Service of a claim of lien is a prerequisite to enforcement of a recorded lien.[9]

Should the Association be the Owner's Agent for Service of Claim of Lien?

CLTA is generally supportive of designating the association as the agent for receipt of notices, but does not believe that this would be appropriate for service of a claim of lien:

> [W]e would like to point out that, for purposes of authorizing work or sending notices, it is fine to have the Association act on behalf of all owners. But at the point of a lawsuit seeking to foreclose the mechanics lien against the entire project, each owner whose interest is to be affected needs to be personally named as a defendant and served.[10]

The Commission's proposal to designate the association as agent for receipt of notices was based on a concern, discussed at length in Memorandum 2016-14, that requiring notice be given to every individual owner in a CID could be

6. See Exhibit.
7. Proposed Section 8119.
8. See proposed Civil Code §§ 4620, 6660.
9. Section 8416(e).
10. See Exhibit.

prohibitively burdensome for some claimants, especially where the amount claimed is small. There are CIDs in California with several thousand separate interest owners.

The tentative recommendation would not deny individual CID owners notice of service of a claim of lien, it would simply shift the burden of providing that notice, placing it on the association rather than the lien claimant. In most cases, the association would seem to be in a much better position than a typical lien claimant to notify every owner of a lien claim. The association should have ready access to a complete membership mailing list and have mechanisms in place for providing notice to its members.

The Commission needs to decide whether it wishes to change its recommendation to address the concern raised by CLTA. If so, this could be done by revising proposed Section 8119, to read:

> 8119. (a) With respect to a work of improvement on common area within a common interest development, 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. Any provision of this part that requires the delivery or service of a notice ~~or claim~~ to or on the owner of common area property may be delivered to or served on the association. This subdivision does not apply to the service of a claim of mechanics lien under Section 8416.
>
> (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.

If that change is made, there would be no need for proposed Sections 4620 and 6660 to be included in the recommendation. As drafted, those sections require that an association give members notice of claim of lien. If the proposal were changed so that the association is not the agent for receipt of such claims, then the notice provisions would have no application.

Related Point Concerning Method of Delivery

In light of CLTA's concern, it is also worth discussing the *method* of delivery prescribed in the tentative recommendation. In CID statutory law, there are two different methods that an association might be required to use when delivering notices to members, "individual delivery" and "general delivery." Those methods are defined, in Sections 4040 and 4045, as follows:

Civ. Code § 4045. "Individual delivery" of notice to members

4040. (a) If a provision of this act requires that an association deliver a document by "individual delivery" or "individual notice," the document shall be delivered by one of the following methods:

(1) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier. The document shall be addressed to the recipient at the address last shown on the books of the association.

(2) E-mail, facsimile, or other electronic means, if the recipient has consented, in writing, to that method of delivery. The consent may be revoked, in writing, by the recipient.

(b) ….

(c) For the purposes of this section, an unrecorded provision of the governing documents providing for a particular method of delivery does not constitute agreement by a member to that method of delivery.

Civ. Code § 4045. "General delivery" of notice to members

4045. (a) If a provision of this act requires "general delivery" or "general notice," the document shall be provided by one or more of the following methods:

(1) Any method provided for delivery of an individual notice pursuant to Section 4040.

(2) Inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided in this section.

(3) Posting the printed document in a prominent location that is accessible to all members, if the location has been designated for the posting of general notices by the association in the annual policy statement, prepared pursuant to Section 5310.

(4) If the association broadcasts television programming for the purpose of distributing information on association business to its members, by inclusion in the programming.

(b) Notwithstanding subdivision (a), if a member requests to receive general notices by individual delivery, all general notices to that member, given under this section, shall be delivered pursuant to Section 4040. The option provided in this subdivision shall be described in the annual policy statement, prepared pursuant to Section 5310.

As can be seen, "individual delivery" is designed to effect actual delivery to every member individually. By contrast, "general delivery" permits use of methods that are likely to result in constructive notice to most members (e.g., posting) and may result in some delay (e.g., inclusion in monthly assessment mailing).

As drafted, the tentative recommendation provides for *general* delivery of notice that an association has been served with a claim of lien. Given the importance of notice of a claim of lien, as an indication that a lien has been recorded and litigation may commence, it might make better sense to require that notice of a lien claim be given *promptly* by *individual* delivery methods.

If the Commission decides to recommend that the association be the owners' agent for service of a claim of lien, it may wish to consider changing the method by which the association gives notice of a claim of lien to its members.

Such a change would be easy to implement by making small technical revisions to the attached draft. No significant changes to the narrative explanation or Commission Comments would be required.

EXCLUSIVE USE COMMON AREA

CLTA suggests that the law should provide a special rule for mechanics lien liability for a work of improvement on "exclusive use common area" ("EUCA"). EUCA is "a portion of the common area designated by the declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and which is or will be appurtenant to the separate interest or interests."[11] Examples of EUCA include dedicated parking spaces, balconies, or patios. While EUCA is part of the common area, the responsibility for maintenance and repair of EUCA is generally assigned to the associated separate interest owner.[12]

CLTA proposes that the law should

> Clarify that a mechanics lien for work performed by the owner of a lot or unit on the owner's "exclusive use common area" applies only to that owner's interest, even if approved by the Association. (It is common for CC&Rs to require Association approval for work done by an owner on the owner's property.)

If the staff understands the suggestion correctly, CLTA's suggestion could be implemented by adding a subdivision to Section 4615, along these lines:

> If a work of improvement on exclusive use common area is authorized by the separate interest owner who has the right of exclusive use of the improved property, any mechanics lien for the

11. Section 4145.
12. Section 4775(a)(3).

> work of improvement can only be enforced against the authorizing owner's interest in the improved property. This subdivision applies even if the work of improvement was also authorized by the association.

Argument in Favor of Proposed Reform

If fewer than all owners in a CID have the exclusive right to use EUCA, any improvement to the EUCA would only directly benefit those owners. For example, if there is a parking lot dedicated for the use of owners in a particular building within a CID, only those owners directly benefit from that parking lot.

To the extent that this is true, one could argue that only those owners who enjoy the benefit of the EUCA should be obligated to pay for repairs or improvements to that EUCA. If the owners contract for such work and a contractor or material provider claims nonpayment, why should owners who receive no direct benefit from the EUCA have their property burdened by the lien?

Moreover, existing law generally provides that a separate interest owner is responsible for maintaining EUCA appurtenant to that owner's separate interest.[13] If only benefitted owners have financial responsibility for the maintenance of EUCA, then arguably they should be the only owners liable for a failure to pay a contractor or material provider for such work.

Concerns About Proposed Reform

The staff has three concerns about the proposed reform. They are discussed below

Scope and Character of Recommendation

When the Commission decided to go forward with the tentative recommendation, it took a conservative approach to its content. This was partly based on a recognition that mechanics lien law and CID law are both technically complicated and controversial topics. It was also based on the Commission's decision that this study be conducted as a law student project, to the extent practicable.[14]

13. Section 4775(a)(3).
14. Minutes (April 2016), p. 5 ("To the extent practicable, this study should be a law student project.").

Most of the reforms proposed by the staff were set aside as too uncertain in their effect or potentially controversial. This included a proposed refinement of the rules governing the authorization of work on EUCA.[15]

As the discussion that follows indicates, the CLTA proposal involves some technical complications. The staff also sees two ways in which it could prove to be controversial: (1) It would allocate financial liability unequally between different owners in a CID. (2) It would limit the scope of property liable for a lien claim. The proposal would not simply clarify or rationalize clunky procedures. It could substantively affect who pays and gets paid.

The staff is not suggesting that the proposal lacks merit. We are simply noting that its complexity and potential for controversy may make it unsuitable for inclusion in this particular recommendation.

Which Separate Interest Owners Would be Liable?

CLTA seems to be suggesting that liability for work on EUCA should be limited to the separate interest owner who *authorizes* the work. But EUCA can be structured so as to benefit more than one separate interest. For example, EUCA could be a parking lot that is reserved for use by the owners of numerous separate interests located in a particular building.

If one of those owners is delegated (or assumes) the task of contracting for maintenance of that parking lot, why should liability for nonpayment be limited to the owner who executed the contract? One of the distinguishing features of the mechanics lien right is that it is not limited by privity. The right attaches to the improved property.

As discussed above, *all* owners who have a right to use improved EUCA would benefit from the maintenance or improvement of that EUCA and arguably should share responsibility for the cost of the improvement — including lien claim liability if a contractor or material provider is unpaid. The staff sees no good policy reason to limit liability to the owner who happens to have contracted for the work. Moreover, if that were the rule, individual owners might be deterred from taking on the responsibility of authorizing necessary work.

This concern could be addressed by adding language that expressly provides for the liability of all owners who have a right to use the EUCA:

15. See Memorandum 2016-14, p. 15; Minutes (April 2016) pp. 4-5.

> If a work of improvement on exclusive use common area is authorized by a separate interest owner who has a right of exclusive use of the improved property, any mechanics lien for the work of improvement can only be enforced against the interests of all owners who have a right to use the improved property. This subdivision applies even if the work of improvement is also authorized by the association.

One potential problem with that approach is that it would require the lien claimant to determine which owners in the CID have a right to use the improved property. That would require the claimant to locate and understand the association's governing documents. That might unduly burden legally unsophisticated claimants and claimants with small claims.

Association May be Responsible for Maintenance of EUCA

While existing law *generally* provides that a separate interest owner is responsible for maintenance of appurtenant EUCA, the law *permits* other arrangements.[16] A CID's government documents may lawfully assign financial responsibility for maintenance of EUCA to the association as a whole.

If the association as a whole is financially responsible for maintenance and improvement of EUCA, one could argue that the association should also be liable for any lien claim for work performed on the EUCA. In many CIDs, this would mean that all members are collectively liable, as joint owners of the common area.

This concern could be addressed by adding language making clear that the rule on member liability only applies if the benefitted member has financial responsibility to maintain the EUCA:

> If a work of improvement on exclusive use common area is authorized by the separate interest owner who has the right of exclusive use of the improved property and has financial responsibility for maintenance of the improved property, any lien for the work of improvement can only be enforced against the authorizing owner's interest in the improved property. This subdivision applies even if the work of improvement is also authorized by the association.

This approach would also require the lien claimant to find and understand the CIDs governing documents (in order to determine who has financial

16. Section 4775(a)(3).

responsibility for maintenance). Again, this could impose an undue burden on legally unsophisticated claimants or those with small claims.

Conclusion

The Commission needs to decide whether to include a reform of the type discussed above in its recommendation. If so, the Commission will need to decide whether to include one or both of the modifications proposed by staff.

The attached draft does not include any version of this proposed reform. If the Commission decides to add such a reform, it would probably be best to postpone approval of the final recommendation until the December meeting. This would give the staff time to prepare a narrative explanation of the reform, legislative language, and an official Commission Comment, for Commission review. It would also provide an opportunity for additional public comment on the Commission's decision.

How would the Commission like to proceed?

LIEN RELEASE BOND

Existing Section 4615(c) provides:

> 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.

CLTA proposes that this provision be revised to provide an alternative way for a CID owner to remove property from a lien — by recording a mechanics lien release bond:

> Amend Civil Code 4615(c) to add that an owner can record a Mechanics Lien Release Bond as an alternative to paying the owner's allocated portion of the common area work. (This is important because an owner should not be "blackmailed" into making a payment where there is a dispute over the quality of the work or the amount of the bill.)[17]

A mechanics lien release bond is an existing mechanism used to clear property title of a recorded mechanics lien claim, where the property owner disputes the claim. It requires that the owner obtain and record a bond in the

17. See Exhibit.

amount of 125% of the claim, conditioned on payment of any judgment and costs that may result from the claim. A mechanics lien release bond is authorized and regulated by Section 8424, which provides:

> (a) An owner of real property or an owner of any interest in real property subject to a recorded claim of lien, or a direct contractor or subcontractor affected by the claim of lien, that disputes the correctness or validity of the claim may obtain release of the real property from the claim of lien by recording a lien release bond. The principal on the bond may be the owner of the property, the direct contractor, or the subcontractor.
>
> (b) The bond shall be conditioned on payment of any judgment and costs the claimant recovers on the lien. The bond shall be in an amount equal to 125 percent of the amount of the claim of lien or 125 percent of the amount allocated in the claim of lien to the real property to be released. The bond shall be executed by an admitted surety insurer.
>
> (c) The bond may be recorded either before or after commencement of an action to enforce the lien. On recordation of the bond, the real property is released from the claim of lien and from any action to enforce the lien.
>
> (d) A person that obtains and records a lien release bond shall give notice to the claimant. The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1 and shall include a copy of the bond. Failure to give the notice required by this section does not affect the validity of the bond, but the statute of limitations for an action on the bond is tolled until notice is given. The claimant shall commence an action on the bond within six months after notice is given.

Arguments in Favor of Proposed Reform

The proposed reform would relieve owners of the pressure to pay invalid mechanics lien claims, simply as a way to clear title. And it would accomplish this without depriving the lien claimant of the ability to be paid for a valid claim. It would simply shift the source of recovery, from the lien to the bond.

This approach would rely on an existing mechanism, which presumably reflects existing legislative policy on how to balance competing interests when a property owner disputes the validity of a recorded lien claim. Because the lien release bond is an existing mechanism, incorporating it into Section 4615(c) would be fairly straightforward and would probably not cause unexpected technical problems.

One final point: existing law already permits a CID property owner — like any other owner of real property — to record a mechanics lien release bond to

clear title of a disputed lien claim. It is possible, but not certain, that this mechanism can also be used in the situation addressed by Section 4615, to clear an owner's share of a lien recorded against multiple CID owners. Expressly adding language on use of a lien release bond to Section 4615 would clear up any ambiguity on that point and might be more of a clarification than a substantive change.

Concern About Proposed Reform

While it is clear that recordation of a mechanics lien could be used to pressure owners into paying off a disputed claim, it also provides a relatively affordable, nonjudicial mechanism to encourage payment of valid claims.

The recordation of a lien release bond would impose a practical burden on a lien claimant. The claimant could no longer rely on the leverage that a lien creates in order to encourage payment of a claim. Instead, the claimant would need to bring an action to enforce the claim.

The cost of an enforcement action could be prohibitive, especially if the amount of the claim is small. The likelihood that the amount of the claim is prohibitively small would seem to be greater in the situation described in Section 4615(c), because the total amount of the claim would be divided between multiple owners in the CID.

Because the reform could tilt the tactical advantage between lien claimants and property owners and could make collection of small amounts prohibitively difficult in some situations, the reform could be controversial.

Conclusion

The Commission needs to decide whether to include the proposed reform in its recommendation. If it wishes to do so, Section 4615(c) could be revised as follows:

> 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~~ of the condominiums by doing one 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.
>
> (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.

This proposal is not included in the attached draft. If the Commission decides to add this reform, it would probably be best to postpone approval of the final recommendation until the December meeting. This would give the staff time to prepare a narrative explanation of the reform and an official Commission Comment, for Commission review. It would also provide an opportunity for additional public comment on the Commission's decision.

How would the Commission like to proceed?

CONCLUSION

The Commission needs to decide whether to approve the attached draft as a final recommendation, with or without changes. If the Commission decides to make significant changes to the recommendation, which would require revision of the narrative explanation, statutory language, and Commission Comments, it may wish to postpone final approval of the recommendation until the December meeting. This would permit the staff to bring back revised language for Commission review and would provide an opportunity for public comment on the proposed changes. The additional delay should not be an obstacle to introducing implementing legislation in 2017.

Respectfully submitted,

Brian Hebert
Executive Director

EMAIL FROM ANTHONY HELTON, CALIFORNIA LAND TITLE ASSOCIATION

Good Morning Brian:

Please find below several comments from CLTA on CLRC Memo 2016-14, dealing with mechanics' liens and common interest developments. We respectfully suggest the following:

1. Apply Civil Code 4615 to all common interest developments (it currently applies only to residential condominiums).
2. Clarify that a mechanics lien for work performed by the owner of a lot or unit on the owner's "exclusive use common area" applies only to that owner's interest, even if approved by the Association. (It is common for CC&Rs to require Association approval for work done by an owner on the owner's property.)
3. Amend Civil Code 4615(c) to add that an owner can record a Mechanics Lien Release Bond as an alternative to paying the owner's allocated portion of the common area work. (This is important because an owner should not be "blackmailed" into making a payment where there is a dispute over the quality of the work or the amount of the bill.)

Finally, while this is not a recommended change, we would like to point out that, for purposes of authorizing work or sending notices, it is fine to have the Association act on behalf of all owners. But at the point of a lawsuit seeking to foreclose the mechanics lien against the entire project, each owner whose interest is to be affected needs to be personally named as a defendant and served.

Please let me know if there's any further information or clarification that we can provide, and if you would like us to formalize and distribute our comments on CLTA letterhead.

Thank you,

Anthony

#H-859

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

RECOMMENDATION

Mechanics Liens in Common Interest Developments

August 2016

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739
650-494-1335
<commission@clrc.ca.gov>

SUMMARY OF RECOMMENDATION

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

- Mechanics lien procedures that require the delivery of a notice to the "owner" of improved property may be confusing 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 Commission recommends reforms to address those problems. This recommendation was prepared pursuant to Resolution Chapter 63 of the Statutes of 2014.

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 two problems with the application of the mechanics lien remedy to a work of improvement in the common area of a CID:

- Mechanics lien procedures that require the delivery of a notice to the "owner" of improved property may be confusing 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.

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

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 done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens.").

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.

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 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]

In order to prevent surprise to separate interest owners if the recordation of a claim of lien is imminent, the Commission also recommends that the association

---

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").

7. See Civ. Code § 8416.

8. See, e.g., Civ. Code § 4775.

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

have the duty of notifying the separate interest owners when a claim of lien is served on the association.[10]

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.

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 behalf of the development as a whole and about the resulting mechanics lien liability. The answers provided in Section 4615 for condominium projects make equal sense for all types of CIDs.

---

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

11. Civ. Code § 8404.

For those reasons, the Commission recommends that Sections 4615 and 6658 (the parallel provision that governs commercial and industrial CIDs) be generalized to apply to all types of CIDs.[12]

---

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

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 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.

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

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), the association shall give general notice to the members, pursuant to Section 4045.

Comment. Section 4620 is new. It requires general notice of a mechanics lien claim for work on the common area.

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 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.

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

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), the association shall give notice to the members.

Comment. Section 6660 is new. It requires general notice of a mechanics lien claim for work on the common area.

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, 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. Any provision of this part that requires the delivery or service of a notice or claim to or on the owner of common area property 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.
