

Date of Hearing: April 5, 2017

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 534 (Gallagher) – As Introduced February 13, 2017

**SUBJECT:** Common interest developments: mechanics liens

**SUMMARY:** Clarifies the authority of a common interest development (CID) to authorize work or improvement to the common area and allows a mechanics lien to be served to an association (HOA) in lieu of all separate interest owners. Specifically, **this bill:**

- 1) Allows the HOA to authorize labor, services, or materials furnished for the common area in lieu of the express consent of each separate interest owner.
- 2) Designates the association of a CID as the agent for the owners of the separate interests in the CID regarding work done for the improvement of the common area and for all notices and claims relating to the improvements.
- 3) Clarifies an owner of a separate interest can remove their separate interest from a lien against two or more separate interests in a CID by:
  - a) Paying the holder of the lien the fraction of the total sum of the lien that is attributable to the owner's separate interest; and
  - b) Recording a lien release bond equal to 125% of the sum secured by the lien that is attributable to the owner's separate interest.
- 4) Requires the association to notify its members within 60 days of receiving a claim of lien.

**EXISTING LAW:**

- 1) Defines "association" as a nonprofit corporation or unincorporated association created for the purpose of managing a CID.
- 2) Defines "common area" as the entire CID except for the separate interest areas.
- 3) Defines "separate interest" as a separately owned unit, space, or the exclusive right to occupy a portion of the real property.
- 4) Defines "CID" as a community apartment project, a condominium project, a planned development, or a stock cooperative.
- 5) Requires that a lien filed against a separate interest owner for performed services or materials furnished can only be filed if the separate interest owner expressly consented to or requested the service or materials. Express consent is not required in emergency repairs.
- 6) Enforcement of a mechanics lien claim is contingent on the claimant having given timely preliminary notice to the owner of the improved property.

- 7) Requires that lien notices and claims be delivered to or served on the improved property's owner or owners.
- 8) Requires express authorization for the work or improvement by the owner before a claimant has a valid right to a mechanics lien.
- 9) Allows an owner of real property in dispute of a recorded mechanics lien claim to release the property from the lien by obtaining a lien release bond for 125% of the claimed amount.
- 10) Allows the owner of a condominium where a mechanics lien is recorded against two or more condominiums to remove their 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.

**FISCAL EFFECT:** None

**COMMENTS:**

Background: A mechanics lien is a special type of creditor's remedy which is established in the state Constitution. The procedures are provided in the Civil Code. It provides a lien right for those who have "bestowed labor or furnished material" on a work of improvement of real property. Under current law, when a mechanics lien is filed for work done on a CID common area, each separate property owner needs to be noticed. This makes it difficult to file a valid lien because it may be very difficult to identify who all of the separate property owners. This bill allows the notice to be served to the HOA in lieu of all of the separate property owners, making it easier for the valid lien to be filed.

This bill makes it easier for work to be done on common areas by allowing the HOA to authorize the work, instead of having to get express consent from every single separate interest owner, which could include hundreds or thousands of owners.

This bill also makes it easier for an owner of a separate property in a CID to remove the lien from their separate property title by allowing them the option to use a lien release bond or to pay the fraction of the total sum of the lien that is attributable to the owner's separate interest.

Purpose of the bill: According to the author "This bill provides that a HOA may, for the purposes of mechanics lien law, authorize a work of improvement on common area property. It also provides that mechanics lien notices for a work of improvement on common area property may be given to the HOA, as the agent of the owners. If a claim of lien is served on the HOA, the HOA would be required to notify its members. This bill also makes clear that the CID property owner can use a lien release bond to clear a mechanics lien from title, when the lien applies to more than one use in a CID."

This bill helps to clarify a few issues:

Notice to owner of common area: Enforcement of a mechanics lien claim is contingent on the claimant having given timely preliminary notice. The law also requires that the claims and notices be delivered on the improved property's owner. In many situations it is difficult to determine who are the owners of a common area in a CID. These areas may be owned by a corporation such as a CID association or by all the separate interest owners as tenants in

common and the number of separate interest owners could be in the hundreds or thousands. This uncertainty in identifying who is the owner can undermine the enforcement of an otherwise valid lien claim. Also if the number of separate interest owners is very high, then requiring notice to every owner could be unduly burdensome. Delivering notice to the association as the owner eliminates the uncertainty and burden.

Authorization of work in condominium projects: In order for a claimant to have a valid mechanics lien they must first be authorized to do the work by the owner. It can be difficult to establish who the owner is, and therefore difficult to secure the correct authorization. If the common area is owned by separate interests as a tenancy in common, then the owner could be all of the separate interest owners. Currently condominiums can delegate this authorization to their associations. This bill extends this ability to all CIDs.

Use of lien release bond in common interest development: An owner of real property can obtain a lien release bond if they are disputing the validity or correctness of the claim. This allows the property owner to clear the disputed lien from the title. Under current law if a lien is recorded against two or more condominiums an owner may remove their condominium from the lien by paying the fraction of the total sum secured against the owner's condominium. It is not clear if an owner can remove a condominium from a lien by obtaining a release bond. This bill clarifies that a release bond can be used to remove all CIDs from a mechanics lien when a claim is recorded against two or more CIDs and all CIDs can pay a fraction of the total sum secured against the owners separate property to remove the lien.

Double-referred: This bill was also referred to the Judiciary Committee where it will be heard should it pass out of this committee.

#### Technical amendments:

On page 3, in line 20, strike out “8000),” and insert “8000) for a work of improvement on a common area,”

On page 4, in line 11, strike out “800),” and insert “800) for a work of improvement on a common area,”

On page 4, in line 18, strike out “development,” and insert “development”

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Law Revision Commission (Sponsor)

##### **Opposition**

None on file.

**Analysis Prepared by:** Lisa Engel and Peter Stevens / H. & C.D. /916-319-2085