

Memorandum 2016-55

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

The Commission¹ has done extensive work on two different aspects of real property law, common interest developments (“CIDs”) and mechanics liens. In June, the Commission circulated a tentative recommendation that proposed three improvements to the law governing the application of a mechanics lien to property within a CID:²

- 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 and 6658 (authorization of work on common area in condominium project) so that they apply to all common interest developments and not just condominiums.

At the September meeting, the Commission considered public comment on the tentative recommendation⁵ and made two changes to the proposed law:

- When an association gives notice of a claim of lien, it should be required to use “individual delivery” methods, rather than “general delivery” methods.

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

3. See proposed Civil Code § 8119.

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

5. See Memorandum 2016-45.

- Civil Code Sections 4615 and 6658 should be revised to expressly permit the use of a lien release bond to remove an owner's property from a recorded mechanics lien claim.⁶

The Commission directed the staff to prepare a revised draft recommendation implementing those decisions.

The revised draft is attached to this memorandum for the Commission's consideration. In addition to changes to the preliminary part and proposed legislation necessary to implement the decisions described above, the staff made a small number of refinements to the attached draft. The most notable were:

- (1) A requirement, in proposed Civil Code Sections 4620 and 6660, that notice be given "promptly." If the Commission approves of the general substance of that change, it might consider whether to specify a time limit for delivery of notice, rather than relying on the word "promptly."
- (2) Proposed Civil Code Section 8119(a) was revised to clarify some awkward language, thus: "~~Any~~ If 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, the notice or claim may be delivered to or served on the association."

The Commission needs to decide whether to approve that draft as a final recommendation, with or without changes.

Respectfully submitted,

Brian Hebert
Executive Director

6. Minutes (Sept. 2016), p. 5.

#H-859

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

**REVISED STAFF
DRAFT**

RECOMMENDATION

Mechanics Liens in Common Interest Developments

December 2016

California Law Revision Commission
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SUMMARY OF RECOMMENDATION

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.

MECHANICS LIENS IN COMMON INTEREST DEVELOPMENTS

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

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

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

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

24 Those problems, and the Commission’s recommended reforms, are discussed in
25 detail below.

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.

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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 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.

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.

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

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

10 AUTHORIZATION OF WORK IN CONDOMINIUM PROJECT

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

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

21 4615. (a) In a condominium project, no labor performed or services or materials
22 furnished with the consent of, or at the request of, an owner in the condominium
23 project or the owners' agent or contractor shall be the basis for the filing of a lien
24 against any other property of any other owner in the condominium project unless
25 that other owner has expressly consented to or requested the performance of the
26 labor or furnishing of the materials or services. However, express consent shall be
27 deemed to have been given by the owner of any condominium in the case of
28 emergency repairs thereto.

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

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

36 The Commission sees no policy reason for limiting those beneficial rules to
37 condominium projects. With respect to the issues raised in Section 4615, there is
38 nothing that distinguishes a condominium project from any other type of CID.

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

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

11. Civ. Code § 8404.

1 Every type of CID has common area property, with some form of shared
2 ownership. Consequently, every type of CID will face questions about who can
3 authorize work on the common area and about the resulting mechanics lien
4 liability. The answers provided in Section 4615 for condominium projects make
5 equal sense for all types of CIDs.

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

10 USE OF LIEN RELEASE BOND IN
11 COMMON INTEREST DEVELOPMENT

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

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

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

27 In order to avoid any uncertainty on that point, the Commission recommends
28 that Section 4615(c) be revised to expressly provide that a mechanics lien release
29 bond may be used, instead of payment, to remove a condominium from a
30 mechanics lien claim recorded against two or more condominiums.¹⁴ The
31 Commission also recommends similar revisions in Section 6658 (the parallel
32 provision that governs commercial and industrial CIDS). These revisions of
33 Sections 4615(c) and 6658(c) would likely be a clarification of existing law, rather

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

13. Civ. Code § 8424.

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.

1 than a substantive change.¹⁵ Moreover, the Commission sees no policy reason to
2 preclude use of a mechanics lien release bond in the situation governed by these
3 sections.

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

1 **Civ. Code § 4615 (amended). Mechanics liens**

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

3 4615. (a) In a ~~condominium project~~ common interest development, no labor
4 performed or services or materials furnished with the consent of, or at the request
5 of, an owner in the ~~condominium project~~ common interest development or the
6 owners' agent or contractor shall be the basis for the filing of a lien against any
7 other property of any other owner in the ~~condominium project~~ common interest
8 development unless that other owner has expressly consented to or requested the
9 performance of the labor or furnishing of the materials or services. However,
10 express consent shall be deemed to have been given by the owner of any
11 ~~condominium~~ separate interest in the case of emergency repairs thereto.

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

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

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

20 (2) Record a lien release bond, pursuant to Section 8424, in an amount equal to
21 125 percent of the sum secured by the lien that is attributable to the owner's
22 separate interest.

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

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

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

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

29 4620. If the association is served with a claim of lien pursuant to Part 6
30 (commencing with Section 8000), the association shall promptly give individual
31 notice to the members, pursuant to Section 4040.

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

36 **Civ. Code § 6658 (amended). Mechanics liens**

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

1 6658. (a) In a ~~condominium project~~ common interest development, no labor
2 performed or services or materials furnished with the consent of, or at the request
3 of, an owner in the ~~condominium project~~ common interest development or the
4 owners' agent or contractor shall be the basis for the filing of a lien against any
5 other property of any other owner in the ~~condominium project~~ common interest
6 development unless that other owner has expressly consented to or requested the
7 performance of the labor or furnishing of the materials or services. However,
8 express consent shall be deemed to have been given by the owner of any
9 ~~condominium~~ separate interest in the case of emergency repairs thereto.

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

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

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

18 (2) Record a lien release bond, pursuant to Section 8424, in an amount equal to
19 125 percent of the sum secured by the lien that is attributable to the owner's
20 separate interest.

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

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

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

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

27 6660. If the association is served with a claim of lien pursuant to Part 6
28 (commencing with Section 8000), the association shall promptly give individual
29 notice to the members, pursuant to Section 6514.

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

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

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

36 8119. (a) With respect to a work of improvement on common area within a
37 common interest development, the association is deemed to be an agent of the
38 owners of separate interests in the common interest development, for all notices
39 and claims required by this part. If any provision of this part requires the delivery
40 or service of a notice or claim to or on the owner of common area property, the
41 notice or claim may be delivered to or served on the association.

1 (b) For the purposes of this section, the terms “association,” “common area,”
2 “common interest development,” and “separate interest” have the meanings
3 provided in Article 2 (commencing with Section 4075) of Chapter 1 of Part 5 and
4 Article 2 (commencing with Section 6526) of Chapter 1 of Part 5.3.

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