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Mechanics Liens on Condominium Property in Illinois By James T. Rohlfing

From time to time, we are asked to represent a subcontractor or contractor who is seeking payment for the labor or materials that it provided to improve the “common areas” of condominium property in Illinois. “Common areas” are those portions of the real property of any condominium that are not a part of any individual condominium unit. Examples of common areas are roofs, hallways, exterior walls, foyers, and elevators. In Illinois, as in most states, an owner of a condominium unit wholly owns his or her individual unit as well as an undivided interest in all of the common areas of the entire condominium building and the surrounding real estate. Each condominium unit owner owns an undivided portion of all common areas that corresponds to a percentage specified in the Declaration of the Condominium (also called the “condominium declaration”).

Condominium declarations are usually recorded with the recorder of deeds for the county where the condominium is located. Such a recordation occurs before all condominium units have been sold or occupied. Once a condominium declaration is recorded with the county recorder, the individual units of the condominium complex are considered separate parcels of property, bearing their own legal description and property identification number. Thus, to properly protect a contractor’s or subcontractor’s right to payment under the Illinois mechanics lien laws, with limited exceptions, a potential lien claimant must record its mechanics lien against each individual unit. There is slight authority under Illinois law that supports filing only one lien against all of the units in a condominium, sometimes called a “blanket” lien, when there is one contract that covers all of the work performed. Nonetheless, the only “safe” approach remains to file a lien claim against each condominium unit and unit owner individually.

For such a lien to be enforceable, or “perfected”, against those who purchase the liened property, the mechanics lien must be recorded with the county recorder within four months of the date of the last furnishing of work for the affected unit. In addition, the lien claim must properly apportion the work performed among the various units, indicating the percentage of the claim attributable to each unit. This is merely the percentage of the common area owned by the individual owner, as reflected in the condominium declaration.

This may mean that multiple liens may have to be filed with regard to work performed under a single contract. For example, the time period for filing a lien begins with regard to each unit from the day the claimant’s work on that unit was completed even though more work may yet be required for other units. The deadline to perfect a lien for work limited to improvements of common areas is the same for all units. In short, the question of when and how to file a lien for work performed on condominiums is a complicated one and should not be made without prior

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consultation with an attorney.

In addition to recording the lien with the office of the recorder of deeds in the county where the condominium property is located, a notice of the lien claim must be properly served upon each individual unit owner, their respective mortgagees and others with an interest of record in the property. For some limited purposes, notice to the board of managers of a condominium association (as the board serves as agent for each member of the condominium association) and the developer will be considered notice to the unit owners. While the validity of such a notice in Illinois may be subject to challenge, it might be the only cost-effective alternative to serving notice on hundreds of unit owners and mortgagees of a single property. As with the question of when to file a lien, the identification of who should be served with a notice of the claim is essential to the validity of the claim.

Other challenges are frequently encountered when filing lien claims against condominium property. For example, it can be unclear whether an improvement was made to common elements or to individual units. Additionally, if the condominium development involves a large number of unit owners, it can be both difficult and expensive to obtain accurate information concerning each of the unit owners and others with an interest in the property along with the exact legal description of each unit subject to the lien. A title company might charge thousands of dollars simply to perform a tract search of the records to obtain ownership information for all unit owners in a large condominium project.

As with other mechanics liens in Illinois, a subcontractor must provide a notice of its claims within 90 days of its last day of work at the site. The notice must be served on the current owner and their lenders and, if a ninety-day notice is late, a sworn statement to an owner from a general contractor might, under some circumstances, satisfy the notice requirement. Moreover, under limited circumstances, lien rights survive even if the claim is recorded more than four months following the last date of furnishing labor or materials.

In summary, when we are retained to perfect a mechanics lien claim against condominium property in Illinois, we remind our client that:

1. Unless we file a separate lien against each individual unit in the building(s), the lien claim might be unenforceable.
2. Notice to all of the unit owners is often impractical and expensive, while notice to the board of managers and developer is much easier, but is subject to judicial challenge;
3. Additional information is required to file even a questionable lien; including

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the last date of furnishing to each unit and the percentage of the work attributable to each individual unit.

4. The information furnished must be reasonably accurate; as errors, however slight, could result in an invalid lien claim or damages to a property owner for which a lien claimant could be sued for defamation of title.