



Tips for the Commercial Creditor

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Apportioning A Lien Involving Condominium Property

A contractor can only have a lien for material and services it actually furnished to improve the real estate. (See 770 ILCS 60/1(a),(b)) Section 770 ILCS 60/7(a) of the Illinois Mechanic's Lien Act provides that labor and materials must "actually be used in the construction" and be "delivered" to the "owner". This sounds like a simple proposition, but it can become complicated when you are hired to provide work and materials involving condominium property because different parts of the structure are owned by different individuals and/or groups of individuals.

According to The Illinois Condominium Property Act, "[n]o labor performed or materials furnished with the consent or at the request of a particular unit owner shall be the basis for the filing of a mechanic's lien claim against any other unit." (765 ILCS 605/9.1) Additionally, as regards liens arising out of construction on the common elements, each unit owner "shall be liable for the payment of his unit's proportionate share..." *Id.* In sum, a unit owner is only liable for lien relating to their own unit or as regards their percentage share of the common elements.

In practice, this means that your lien claim should specify whether the work and materials you provide relate to the common elements owned by the entire association or to the individual units owned by individual owners. If to both, then you should state what portion/value of work relates to the individual and what portion/value relates to the association. Regarding work on common elements, you should apportion the lien to each unit according to their percentage ownership interest as indicated in the condominium documents. That way, a unit owner who wants the lien removed, can pay you their share.

If you are not careful to correctly apportion your work, you run the risk of your lien being invalidated due to constructive fraud. Be assured that the attorney for the homeowner and/or condominium association will examine your lien carefully. They will look for apportionment errors and attack your lien rights at the earliest stages of litigation. It is best to do your homework in advance and draft your lien accurately from the start.

Start by taking a good look at your contract. Are you being hired by the condo association or a unit owner? This will help you evaluate the situation. For the most part, an individual unit owner cannot hire a contractor to do work on common elements. But be wary. The association might have empowered an individual unit owner to contract to have work done for the association. Similarly, an association will generally be hiring a contractor to work on common elements. But again, be wary. This is not always the case. An association, with the owners'

approval, could possibly be contracting for work to be done on the individual units. Also, work on common areas might involve collateral work on units. If you have to break through drywall, to get to plumbing servicing the building, then the drywall component of your work might relate to the individual unit whereas the pipes might be common elements.

It is a best practice to examine the nature of the work you are doing to make a determination as to whether you are working on common elements or not. You might need to consult with the condominium declaration to see how particular portions of the property are characterized. If you do this kind of homework in advance, you will be showing your customer that you are sensitive to a pretty sophisticated issue. Better yet, your lien is more likely to be enforceable if it accurately apportions the work among the appropriate owners.

