

## AMENDMENT TO HCS 2058

DELETE SUBSECTION 3 IN ITS ENTIRETY AND REPLACE WITH THE FOLLOWING:

3. Any person or entity who seeks to retain the right to assert a mechanic's lien, hereinafter referred to as "Claimant", against residential real property, hereinafter referred to as "Property" shall record a Notice of Rights in the office of the recorder of deeds for the county in which the Property is located within 45 days, or as otherwise herein provided, after the Claimant shall first perform any work, labor or materials to, on or for the Property. A Notice of Rights recorded within 45 days after a Claimant first performed work, labor or materials to, on or for the Property preserves the Claimant's lien rights for amounts owing for work, labor and materials performed and furnished from the date the work, labor or materials were first performed or furnished through the date of recording of the Notice of Rights and thereafter. A Notice of Rights recorded more than 45 days after a Claimant first performed work, labor or materials to, on or for the Property preserves the Claimant's lien rights for amounts owing for work, labor and materials performed and furnished from the date the work, labor or materials were first performed or furnished through the date of recording of the Notice of Rights and thereafter but only upon a showing that such later recording of the Notice of Rights has not caused actual financial prejudice to the owner, a subsequent purchaser for value of the Property or the insurer of title of such subsequent purchaser for value of the Property. No Claimant who

performs work, labor or material upon property has to record a Notice of Rights in accordance with this subsection in order to preserve the Claimant's lien rights if the owner of the Property fails to record or post and maintain a Notice of Commencement in accordance with subsection 12.

**REASONS:** Proponents of HB 2058 allege that protection is needed against “hidden liens”, that is, liens that are not asserted or known to title insurance companies until after homes are sold. Therefore, there is no need to limit lien rights if the Claimant is publically known prior to closing and funds are actually paid over. The amendment addresses this issue by providing that a Notice of Rights shall be recorded by the lien claimant within 45 days after the first day of work but if a notice is filed after 45 days the notice will preserve lien rights but only upon a showing that no prejudice was caused by the late notice. All the title companies need to protect themselves against double payment is notice before the property is sold. It is just common sense that if they have knowledge of potential lien claimants before “closing” there is no risk of double payment. The current language would limit lien rights for only part of the value of the enhancement to the property made by the lien claimant even in those instances where there is no risk of double payment. Such a provision is simply a way of preventing liens where there is no risk or prejudice to the title companies.