

AMENDMENT TO HCS 2058

DELETE SUBSECTION 11 IN ITS ENTIRETY AND REPLACE IT WITH THE FOLLOWING SUBSECTION 12:

12. Prior to the commencement of any construction or improvement upon the Property, the owner thereof, or such owner's agent, shall as conditions precedent to having the benefits of this section:

(a) Record in the office of the county recorder for each county in which the Property to be improved is located a Notice of Commencement which shall identify the legal name and address of the owner and include a legal description of the Property, or portions thereof, on which the construction or improvement is to be made; and

(b) Post and maintain in a conspicuous place on the property described in the Notice of Commencement during the course of the actual physical improvement to the Property a Notice of Commencement as herein prescribed which shall be in at least fourteen-point bold type and protected from the elements.

For purposes of this subsection a description sufficient to describe the Property for the purpose of conveyance, or the description contained in the instrument by which the owner took title is a legal description. If the Notice of Commencement furnished by the owner contains incorrect or incomplete information, the owner shall be liable for all damages suffered by a lien claimant who loses its lien rights if the damages are a result of the lien claimant's reliance on the incorrect or incomplete information. If the owner of the Property fails to record a Notice of Commencement in accordance with this section, or if the owner fails to post and maintain a copy of the Notice of Commencement as required by this section, no Claimant has to record a Notice of Rights in accordance with this section in order to preserve the Claimant's lien rights. Any Claimant which uses the information as

stated in the owner's Notice of Commencement in the Claimant's Notice of Rights shall be deemed to have complied with the provisions of subsection 8 as they relate to identification of the owner and legal description of the Property.

REASONS: The current language, for all practical purposes, does not require the owner to disclose to lien claimants who the owner is and what the legal description of the property is. Without such information the lien claimants can not record a Notice of Rights. Under the current language owners have a free pass to either not disclose or to intentionally disclose mis-information. The language is awful because it says the owner is not responsible for failing to disclose or disclosing incorrect and inaccurate information. Think of the opportunities for abuse. All the owner has to do is to mis-state information with regard to the description of the property and lien rights are lost under the current proposal. The current language grants immunity to owners who distribute mis-information. This is unfair. Owners need to be held accountable for the accuracy of sharing their name and the description of the property if they want protection from liens. Sharing of this information is an extremely small price to pay for the huge protection they are obtaining.

The language contained in the substitute bill is impractical and unworkable. Bear in mind the purpose of requiring a Notice of Commencement is to inform the lien claimants in a meaningful way the legal description of the property so they can record their Notices of Rights. If, as proposed, the owner simply tacks a copy of a survey to the wall or posts a copy of the subdivision plat in its office how can the lien claimants get the legal description in a form that can be used in their required notices. Lien claimants need words not pictures. The result of the proposed language would be that potential lien claimants would have to pay a title company to get this information.

If the claimants have to get the information on their own the cost is typically around \$175 to obtain information from a title company. Trying to get free information from your friends at the title company or rely on “do it yourself” information gathered off the Internet is absurd and dangerous. The problem of obtaining correct descriptions is exacerbated in those instances where new subdivisions are being developed. Street names and numbers have not been assigned. Lot numbers are not marked. It can be an extremely difficult chore to determine the correct address, but the owner knows the information and they should share it.

The Claimants’ property descriptions have to be right in their Notices and not getting accurate information can cost them their lien rights. The only fair way is for the owners to provide this information to potential lien claimants in a meaningful and useful manner. Putting plats and surveys on the wall is not sufficient or meaningful. Why do owners not want to give this information? Do they want the claimants to rely on their misinformation so they can defeat the liens on a technicality? If owners are serious about needing protection from secret liens, the least they can do is be responsible for identifying themselves and providing the legal description of the property.

It is grossly unfair to not have any accountability by the owners. They need to identify themselves and be responsible and accountable for the information they provide.