



HOME BUILDERS ASSOCIATION OF CONNECTICUT, INC.

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*Your Home
Is Our
Business*

April 8, 2011

To: Senator Eric D. Coleman and Representative Gerald M. Fox, and members of the Judiciary Committee

From: Bill Ethier, Chief Executive Officer

Re: HB 6644, AAC Priority of Mechanic's Liens

The HBA of Connecticut is a professional trade association with 1,100 member firms statewide, employing tens of thousands of Connecticut citizens. Our members, all small businesses, are residential and commercial builders, land developers, home improvement contractors, trade contractors, suppliers and those businesses and professionals that provide services to our diverse industry. Our members build 70% to 80% of all new homes and apartments in the state each year.

The HBA of Connecticut opposes HB 6644. With apologies to its sponsor since we have not had a chance to discuss the bill prior to the public hearing, as written HB 6644 greatly upsets the business of constructing homes, adding paperwork burdens, time delays and potentially thousands of dollars to the cost of every home. We urge you to not support this bill.

In residential construction, there are fifty (50) to one hundred (100) suppliers and subcontractors who touch a home under construction. For the vast majority (95+%) of transactions between general contractors, subcontractors and suppliers, mechanic's liens for supplying materials or rendering services to the construction are not filed because full payments are made.

HB 6644 establishes a *new* Notice of Commencement of Work that can be filed on the land records of the municipality by any supplier or contractor and then establishes a *new* priority among suppliers and contractors if a payment issue arises and mechanic's liens are recorded later on. Under HB 6644, those suppliers and contractors who recorded the Notice of Commencement of Work would be in line for payment ahead of any supplier or contractor who did not file the new Notice of Commencement of Work. **Therefore, under HB 6644, many suppliers and subcontractors will pay a recordation fee of \$50 or more to record the new Notice on the land records in order to protect themselves just in case there is a payment issue later on.** If most or all the suppliers and contractors touching a home construction job did record such Notice, and those costs are passed on, **it will add up to thousands of dollars potentially passed on to a home buyer, or these costs would have to be absorbed by the home builder or by the suppliers and subs. We're not aware of any significant payment issues in residential construction that justify these added costs for everyone.**

But it would not end there. Builders have construction loans that are disbursed by banks in draws, i.e., portions are released as construction proceeds to different phases (e.g., foundation, framing, sheathing and roofing, etc.). Banks often require a title review prior to releasing the next draw. When the title examination sees these new Notices of Commencement of Work on the land records, banks will require them to be released because they do not want to risk losing

their priority position for re-payment of its loan. **HB 6644 then creates more paperwork trail burdens and additional costs to manage this new process.**

We understand that title insurance companies may be supporting the bill. This is not surprising since mechanic's liens can exist without being of record (they just cannot be recorded more than 90 days after work is furnished), thwarting a diligent title search. This complicates the work and the risk of the title insurers and a pre-filed notice would help their work. Again, however, payment issues occur in a very small percentage of residential construction jobs (<5%). **Any pre-filing notice requirement, or option as in HB 6644, affects 100% of projects to address one issue in less than 5% of projects with a payment problem that may lead to the filing of a mechanic's lien. This is not sound policy.**

This proposal would also benefit large contractors to the detriment of the many small contractors. It disadvantages the guys who don't do the paperwork and recordation of the Notice, pushing them down the priority equity chain and reducing their likelihood of recovery, to the benefit of the title insurers and the big guys.

HB 6644 also greatly complicates the closing process for selling new homes to buyers. The process of preparing for a closing and providing all of the required documentation needed to close on a property today is already overly complicated and burdensome for all. Lien waivers are typically required now and it is almost a full time job to assemble and track them during the construction process. Lenders will insist each individual who recorded a "Notice of Commencement of Work" to go to the town hall and record a release (more money) prior to a closing taking place. But what happens if a party has been paid but does not wish to execute a release? Do we spend a year or more in court to resolve the matter? Or what if the party is on vacation, or if the party has some unrelated dispute and wants to hold a builder hostage to the release?

If the intent of the bill is to protect certain providers of services, such as architects, engineers and surveyors, who provide services at the beginning of a project, even if the bill were limited to them, as a practical matter this new priority hierarchy may not work. Construction lenders will want to be number one and will require the borrower (i.e., home builder) to obtain releases from any prior recorded Notices of Commencement of Work. It will be difficult to obtain these releases because the work for which such Notices are recorded may not be completed and, therefore, payment for such work is not yet due and no liens are yet, or may never be, filed. Yet, the potential lienors will want to preserve a priority position – just in case. **So, HB 6644 sets up a conflict between banks who will want all Notices released and suppliers and subcontractors who will not want them released in order to protect their rights. Home builders and buyers will be caught in the middle of this mess.** And, if the law was changed to prevent banks from requiring the releases of these new Notices, it would make construction lending more difficult, or more expensive – something our industry does not need.

Regardless of the problem intended to be solved, the language of HB 6644 appears to be an over-bearing solution. We urge you to not support it and save home buyers and builders thousands of dollars for each home and the accompanying paperwork and tracking headaches.

Thank you for considering our comments.