LITIGATION BRIEFS

Legal Developments Affecting Business

MAY 2009

BUYER BEWARE OF HIDDEN CITY LIENS

By Shannon Raye Martinez

Imagine this scenario. A developer and a buyer enter into an agreement for the "short sale" of a newly constructed home (i.e., the property is selling for less than the total amount of debt upon the property). Prior to closing, the buyer obtains a title report, which does not show any city liens or assessments, but has a general exception for municipal liens. Confident there are no liens, the buyer purchases the property. Shortly thereafter, the buyer receives a bill from the city for the special assessments that the developer agreed to pay upon the sale of the property.

Unfortunately, the above scenario is common in this economy. There are several assessments that a city in Oregon can impose upon real property, usually relating to dividing land or new construction. With real estate sales and new construction declining, it is likely that the developer may not have the funds to pay these assessments prior to the sale of the property.

Cities have authority to place liens on real property for unpaid charges relating to local services and improvements. Two common examples are Local Improvement Districts ("*LIDs*") and System Development Charges ("*SDCs*"). LIDs are typically imposed when the city has made improvements to public property, and decide that the construction has specifically benefited neighboring properties. Common examples are sidewalks and streets. Once constructed, the city may form a special district and impose an assessment for the cost of such improvements on properties within the LID.

SDCs relate to new construction or development only, and allow the city to recover all or part of the cost of capital improvements needed to serve the development. Common examples include the costs to lay the infrastructure for water and sewer services, or to build a park within the subdivision. Cities often enter into agreements with the developer to allow the SDCs to be paid over a period of time and do not require payment of the SDC prior to completion of the development.

It is very likely that LID or SDC assessments will not be paid in full prior to the sale of the property. The city has a right to file a lien upon the property in the amount of these assessments, plus interest. Also, the city may obtain a lien immediately when the charges are assessed, or when the improvement is made, even though the charges may not be due for several years. Additionally, the city may foreclose the property subject to the lien. Generally, foreclosures are not common when the real estate market is doing well. However, in this economy, it is likely that city lien foreclosures will increase.

In order to obtain a lien, the city must either: (1) record its lien in the real property records for the county; or (2) record notice of the lien in an electronic database. The county property records are commonly searched by a title company and should be noted in the title report the buyer receives prior to the closing of the sale. However, cities do not typically record liens for SDC and LIDs in the county records, and instead, most cities provide notice electronically.

Although some title companies have online access to certain city lien records, title companies do not usually search these records when preparing a title report. Instead, the title report states a general exception for any "municipal liens." For a buyer, this probably means that title report does not insure or protect against these liens. Moreover, the title company usually will not search for such liens unless the buyer specifically requests it. As a result, unless a buyer requests information relating to assessments from the city or the title company, the buyer will take the property subject to these liens. So, as a buyer, it is important to obtain this information from the city or the title company prior to buying the property. Otherwise, you could be paying hundreds or thousands of dollars to the city after the property sale to avoid foreclosure of your property.