

Illinois

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Statutory Outline

ILLINOIS COMPILED STATUTES (ILCS)

RIGHTS AND REMEDIES

CHAPTER 770. LIENS.

770 ILCS 60/ MECHANICS LIEN ACT.

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Section 0.01. Short title. This Act may be cited as the Mechanics Lien Act.

Section 1. Contractor defined; amount of lien; waiver of lien; attachment of lien; agreement to waive; when not enforceable.

(a) Any person who shall by any contract or contracts, express or implied, or partly expressed or implied, with the owner of a lot or tract of land, or with one whom the owner has authorized or knowingly permitted to contract, to improve the lot or tract of land or for the purpose of improving the tract of land, or to manage a structure under construction thereon, is known under this Act as a contractor and has a lien upon the whole of such lot or tract of land and upon adjoining or adjacent lots or tracts of land of such owner constituting the same premises and occupied or used in connection with such lot or tract of land as a place of residence or business; and in case the contract relates to 2 or more buildings, on 2 or more lots or tracts of land, upon all such lots and tracts of land and improvements thereon for the amount due to him or her for the material, fixtures, apparatus, machinery, services or labor, and interest at the rate of 10% per annum from the date the same is due. This lien extends to an estate in fee, for life, for years, or any other estate or any right of redemption or other interest that the owner may have in the lot or tract of land at the time of making such contract or may subsequently acquire and this lien attaches as of the date of the contract.

(b) As used in subsection (a) of this Section, "improve" means to furnish labor, services, material, fixtures, apparatus or machinery, forms or form work in the process of construction where cement, concrete or like material is used for the purpose of or in the building, altering, repairing or ornamenting any house or other building, walk or sidewalk, whether the walk or sidewalk is on the land or bordering thereon, driveway, fence or improvement or appurtenances to the lot or tract of land or connected therewith, and upon, over or under a sidewalk, street or alley adjoining; or fill, sod or excavate such lot or tract of land, or do landscape work thereon or therefor; or raise or lower any house thereon or remove any house thereto, or remove any house or other structure therefrom, or perform any services or incur any expense as an architect, structural engineer, professional engineer, land surveyor, registered interior designer, or property manager in, for, or on a lot or tract of land for any such purpose; or drill any water well thereon; or furnish or perform labor or services as superintendent, time keeper, mechanic, laborer or otherwise, in the building, altering, repairing or ornamenting of the same; or furnish material, fixtures, apparatus, machinery, labor or services, forms or form work used in the process of construction where concrete, cement or like material is used, or drill any water well on the order of his agent, architect, structural engineer, registered interior designer, or superintendent having charge of the improvements, building, altering, repairing, or ornamenting the same.

(c) The taking of additional security by the contractor or sub-contractor is not a waiver of any right of lien which he may have by virtue of this Act, unless made a waiver by express agreement of the parties and the waiver is not prohibited by this Act.

(d) An agreement to waive any right to enforce or claim any lien under this Act, or an agreement to subordinate the lien, where the agreement is in anticipation of and in consideration for the awarding of a contract or subcontract, either express or implied, to perform work or supply materials for an improvement upon real property is against public policy and unenforceable. This Section does not prohibit release of lien under subsection (b) of Section 35 of this Act, nor does it prohibit an agreement to subordinate a mechanics lien to a mortgage lien that secures a construction loan if that agreement is made after more than 50% of the loan has been disbursed to fund improvements to the property.

Section 1.1. (Repealed).

Section 1.2. Rental equipment liens. In addition to persons who would otherwise have a lien under this Act, any person, whether contractor or subcontractor, who leases construction equipment to another for use in the process of constructing a specific improvement to real estate, has a lien for the rental value of the construction equipment to the same extent and in the same manner as provided in this Act for other liens. This Section shall apply only if, and to the extent that, the equipment is used on or about the site of the improvement. This Section does not apply if the improvement is either a single family residence or a multi-family residence of fewer than 12 units in a single building.

Section 2. Labor, services, material, fixtures, apparatus or machinery, forms or form work furnished by mistake. Any person furnishing labor, services, material, fixtures, apparatus or machinery, forms or form work for the erection of a building, or structure, or improvement, by mistake upon land owned by another than the party contracting as owner, shall have a lien for such labor, services, material, fixtures, apparatus or machinery, forms or form work upon such building, or structure or improvement, and the court, in the enforcement of such lien, shall order and direct such building, structure or improvement to be separately sold under its judgment, and the purchaser may remove the same within such reasonable time as the court may fix.

Section 3. Labor, services, material, fixtures, apparatus or machinery, forms or form work furnished for lands of married person; lands held by husband and wife. If any such labor, services, material, fixtures, apparatus or machinery, forms or form work are performed upon lands belonging to any married person, with the married person's knowledge and not against the married person's protest in writing, as provided in Section 1 of this Act, in pursuance of a contract with the spouse of such married person, the person furnishing such labor, services, material, fixtures, apparatus or machinery, forms or form work shall have a lien upon such property, the same as if such contract had been made with the married person, and in case the title to such lands upon which improvements are made is held by married persons jointly, the lien given by this Act shall attach to such lands and improvements, if the improvements be made in pursuance of a contract with both of them, or in pursuance of a contract with either of them, and in such cases no claim of homestead right set up by a husband or wife shall defeat the lien given by this Act. For purposes of this Section, property shall be deemed to be held jointly if title is held by the parties either in tenancy by the entirety or jointly, with right of survivorship and not as tenants in common.

Section 4. When the owner of the land shall fail to pay the contractor moneys justly due him under the contract at the time when the same should be paid, or fails to perform his part of the contract in any other manner, the contractor may discontinue work, and the contractor shall not be held liable for any delay on his part during the period of, or caused by, such breach of contract on the part of the owner; and if after such breach for the period of ten days the owner shall fail to comply with his contract, the contractor may abandon the work, and in such a case the contractor shall be entitled to enforce his lien for the value of what has been done, and the court shall adjust his claim and allow him a lien accordingly. In such cases all persons furnishing material which has not been incorporated in the improvement shall have the right to take possession of and remove the same if he so elects.

Section 5. Statement of persons furnishing labor, services, material, fixtures, apparatus or machinery, forms or form work; notice to owner of waiver; size of type.

(a) It shall be the duty of the contractor to give the owner, and the duty of the owner to require of the contractor, before the owner or his agent, architect, or superintendent shall pay or cause to be paid to the contractor or to his order any moneys or other consideration due or to become due to the contractor, or make or cause to be made to the contractor any advancement of any moneys or any other consideration, a statement in writing, under oath or verified by affidavit, of the names and addresses of all parties furnishing labor, services, material, fixtures, apparatus or machinery, forms or form work and of the amounts due or to become due to each. Merchants and dealers in materials only shall not be required to make statements required in this Section.

(b) The following shall apply to an owner-occupied single-family residence:

(i) Each contractor shall provide the owner or his or her agent, either as part of the contract or as a separate printed statement given before the owner or his agent makes the first payment for labor, materials, fixtures, apparatus or machinery, the following:

"THE LAW REQUIRES THAT THE CONTRACTOR SHALL SUBMIT A SWORN STATEMENT OF PERSONS FURNISHING LABOR, SERVICES, MATERIAL, FIXTURES, APPARATUS OR MACHINERY, FORMS OR FORM WORK BEFORE ANY PAYMENTS ARE REQUIRED TO BE MADE TO THE CONTRACTOR."

If the owners of the property are persons living together, the aforesaid statement is conclusively presumed given to each such owners if given to one of them.

(ii) Each subcontractor who has furnished, or is furnishing, labor, services, material, fixtures, apparatus or machinery, forms or form work in order to preserve his lien, shall notify the occupant either personally or by certified mail, return receipt requested, addressed to the occupant or his agent at the residence within 60 days from his first furnishing labor, services, material, fixtures, apparatus or machinery, forms or form work, of his agreement to do so.

The notice shall contain the name and address of the subcontractor or material man, the date he started to work or to deliver materials, the type of work done and to be done or the type of labor, services, material, fixtures, apparatus or machinery, forms or form work delivered and to be delivered, and the name of the contractor requesting the work. The notice shall also contain the following warning:

"NOTICE TO OWNER

The subcontractor providing this notice has performed work for or delivered material to your home improvement contractor. These services or materials are being used in the improvements to your residence and entitle the subcontractor to file a lien against your residence if the labor, services, material, fixtures, apparatus or machinery, forms or form work are not paid for by your home improvement contractor. A lien waiver will be provided to your contractor when the subcontractor is paid, and you are urged to request this waiver from your contractor when paying for your home improvements."

(iii) The statement and the notices required by subdivisions (b)(i) and (b)(ii) of this Section shall be in at least 10-point boldface type. For purposes of this Section, notice by certified mail is considered served at the time of its mailing. Any notice given pursuant to subdivision (b)(ii) of this Section after 60 days by the subcontractor, however, shall preserve his or her lien, but only to the extent that the owner has not been prejudiced by payments made before receipt of the notice.

Section 6. In no event shall it be necessary to fix or stipulate in any contract a time for the completion or a time for payment in order to obtain a lien under this Act, provided, that the work is done or material furnished within three years from the commencement of said work or the commencement of furnishing said material in the case of work done or material furnished as to residential property; and within 5 years from the commencement of

said work or the commencement of furnishing said material in the case of work done or material furnished as to any other type of property. The changes made by Public Act 97-966 are operative from January 1, 2013 through December 31, 2020.

Section 7. Claim for lien; third parties; errors or overcharges; multiple buildings or lots.

(a) No contractor shall be allowed to enforce such lien against or to the prejudice of any other creditor or incumbrancer or purchaser, unless within 4 months after completion, or if extra or additional work is done or labor, services, material, fixtures, apparatus or machinery, forms or form work is delivered therefor within 4 months after the completion of such extra or additional work or the final delivery of such extra or additional labor, services, material, fixtures, apparatus or machinery, forms or form work, he or she shall either bring an action to enforce his or her lien therefor or shall file in the office of the recorder of the county in which the building, erection or other improvement to be charged with the lien is situated, a claim for lien, verified by the affidavit of himself or herself, or his or her agent or employee, which shall consist of a brief statement of the claimant's contract, the balance due after allowing all credits, and a sufficiently correct description of the lot, lots or tracts of land to identify the same. Such claim for lien may be filed at any time after the claimant's contract is made, and as to the owner may be filed at any time after the contract is made and within 2 years after the completion of the contract, or the completion of any extra work or the furnishing of any extra labor, services, material, fixtures, apparatus or machinery, forms or form work thereunder, and as to such owner may be amended at any time before the final judgment. No such lien shall be defeated to the proper amount thereof because of an error or overcharging on the part of any person claiming a lien therefor under this Act, unless it shall be shown that such error or overcharge is made with intent to defraud; nor shall any such lien for material be defeated because of lack of proof that the material after the delivery thereof, actually entered into the construction of such building or improvement, although it be shown that such material was not actually used in the construction of such building or improvement; provided, that it is shown that such material was delivered either to the owner or his or her agent for that building or improvement, to be used in that building or improvement, or at the place where said building or improvement was being constructed, for the purpose of being used in construction or for the purpose of being employed in the process of construction as a means for assisting in the erection of the building or improvement in what is commonly termed forms or form work where concrete, cement or like material is used, in whole or in part.

(b) In case of the construction of a number of buildings under contract between the same parties, it shall be sufficient in order to establish such lien for material, if it be shown that such material was in good faith delivered at one of these buildings for the purpose of being used in the construction of any one or all of such buildings, or delivered to the owner or his or her agent for such buildings, to be used therein; and such lien for such material shall attach to all of said buildings, together with the land upon which the same are being constructed, the same as in a single building or improvement. In the event the contract relates to 2 or more buildings on 2 or more lots or tracts of land, then all of these buildings and lots or tracts of land may be included in one statement of claims for a lien.

(c) A statement that a party is a subcontractor shall not constitute an admission by the lien claimant that its status is that of subcontractor if it is later determined that the party with whom the lien claimant contracted was the owner or an agent of the owner.

(d) A contractor for improvements of an owner-occupied single-family residence must give the owner written notice within 10 days after recording a lien against any property of the owner. The notice is served when it is sent or personally delivered. If timely notice is not given and, as a result, the owner has suffered damages before notice is given, the lien is extinguished to the extent of the damages. The mere recording of the lien claim is not considered damages. This subsection does not apply to subcontractors, and it applies only to contracts entered into after the effective date of this amendatory Act of the 96th General Assembly.

Section 8. All liens or claims for lien which may arise or accrue under the terms of this act shall be assignable, and proceedings to enforce such liens or claims for lien may be maintained by and in the name of the assignee, who shall have as full and complete power to enforce the same as if such proceedings were taken under the provisions of this act by and in the name of the lien claimant.

Section 9. If payment shall not be made to the contractor having a lien by virtue of this act of any amount due when the same becomes due, then such contractor may bring suit to enforce his lien in the circuit court in the county where the improvement is located, and in the event that the contract relates to two or more buildings or two or more lots or tracts of land, then all of said buildings and lots or tracts of land may be included in one complaint. Any two or more persons having liens on the same property may join in bringing such suit, setting forth their respective rights in their complaint; all lien claimants not made parties thereto may upon filing a petition to intervene become defendants and enforce their liens by counterclaim against all the parties to the suit; and the complaint shall not thereafter be dismissed as to any lien claimant, or as to the owner or owners of the premises without the consent of such lien claimant. The plaintiff and all defendants to such complaint may contest each other's right without any formal issue of record made up between them other than that shown upon the original complaint, as well with respect to the amount due as to the right to the benefit of the lien claimed: Provided, that if by such contest by co-defendants any lien claimants be taken by surprise, the court may, in its discretion, as to such claim, grant a continuance. The court may render judgment against any party summoned and failing to appear, as in other cases of default. Such suit shall be commenced or counterclaim filed within two years after the completion of the contract, or completion of the extra or additional work, or furnishing of extra or additional material thereunder.

Section 10. Suits may be instituted under the provisions of this act in favor of administrators or executors, and may be maintained against the representatives in the interest of those against whom the cause of action accrued, and in suits instituted under the provisions of this act, the representatives of any party who may die pending the suit shall be made parties.

Section 11. Averments in pleading; parties; dismissal; notice.

(a) Any pleading asserting a claim for lien shall contain (i) a brief statement of the contract or contracts to which the person (hereinafter called the "claimant") asserting a claim for lien in the pleading is a party and by the terms of which the claimant is employed to furnish lienable services or material for the real property (herein called the "premises"), (ii) the date when the contract or contracts were dated or entered into, (iii) the date on which the claimant's work, labor or material labor, services, material, fixtures, apparatus or machinery, forms or form work was last performed or furnished, whether the claimant completed furnishing or performing its work, labor and material labor, services, material, fixtures, apparatus or machinery, forms or form work and if not why, (iv) the amount due and unpaid to the claimant, (v) a description of the premises, and (vi) such other facts as may be necessary for a full understanding of the rights of the parties. Where plans and specifications are by reference made a part of a contract that is required to be alleged in a pleading, it shall not be necessary to set the same out in the pleading or attached as exhibits, but the same may be produced on the trial of the suit. It shall not be necessary to include a statement of any contract to which the claimant is not a contracting party.

(b) Each claimant shall make as parties to its pleading (hereinafter called "necessary parties") the owner of the premises, the contractor, all persons in the chain of contracts between the claimant and the owner, all persons who have asserted or may assert liens against the premises under this Act, and any other person against whose interest in the premises the claimant asserts a claim.

(c) Necessary parties whose claims or interests are not disclosed by a document recorded at the time a proper *lis pendens* of the action under Section 2-1901 of the Code of Civil Procedure has been recorded (or if the action is instituted as a mortgage foreclosure at the time a proper notice of foreclosure under Section 15-1503 of the Code of Civil Procedure has been recorded) may be named and made parties under the description of "unknown necessary parties". Persons other than unknown necessary parties who may be interested in the premises but whose identities are unknown to the claimant may be named and made parties to the action under the description of "unknown owners".

(d) A claimant may, in its, his or her discretion, make as parties (hereinafter called "permissible parties") to the action any other persons having a legal, equitable or possessory interest in or claim to the whole or any part of the premises, but failure to make any such permissible party a party to the action shall not defeat the lien, but the claim of each claimant asserting a lien claim under this Act in the action shall be subject to the interest of such permissible party not made a party, and the action shall not adversely affect the interest of any such

permissible party not made a party and not served with notice by summons or publication in the action as provided in this Act.

(e) The plaintiff shall cause notice to be given to all such necessary parties or cause them to be served by summons or by publication in like manner and upon the same conditions as in other civil actions, and the plaintiff's failure to do so, shall be grounds for judgment against him, her, or it on the merits. A claimant other than the plaintiff asserting a claim in the action under this Act shall also cause notice to be given to or cause summons to be served upon any necessary parties who have not been joined to the action, and his, her, or its failure to do so shall be grounds for judgment against him, her or it on the merits. Process may issue and service by publication may be had against those persons so named under the descriptions of "unknown necessary parties" or "unknown owners", and judgments entered against them shall be of the same effect as though they had been designated by and served under their proper names, provided that any judgment shall only bind any person served by publication with respect to their interests in the premises and liens asserted or assertable against the premises under this Act. A person who has been properly served in the action by summons or by publication by any claimant shall be deemed properly served by all claimants in the action regardless of whether such persons have been served before or after such claimants or any of them shall have appeared, filed their pleadings or become parties to the action, provided that nothing in this Section 11 shall excuse a claimant from joining all necessary parties to the claimant's pleading, whether as named parties, unknown necessary parties, or unknown owners, within the time permitted by this Act. Nothing in this Section 11 shall prevent service by publication in any proceeding brought under this Act where authorized by this Act in like manner and upon the same conditions as in other civil actions.

(f) Any necessary party or permissible party who has not been joined to the action under his, her, or its proper name, may, upon application of such party to the court wherein the action is pending, be made or become a party at any time before final judgment, but such joinder shall not give such party any substantive rights not otherwise provided by law, or excuse failure to comply with the provisions of any applicable law.

(g) No action under the provisions of this Act shall be voluntarily dismissed by the party bringing it without due notice to all parties to the action, and upon leave of court for good cause shown and upon terms approved by the court.

Section 12. The court shall permit amendments to any part of the pleadings, and may issue process, make all orders, requiring parties to appear, and requiring notice to be given, that are or may be authorized in other civil actions and shall have the same power and jurisdiction of the parties and subject matter, and the rules of practice and proceedings in such cases shall be the same as in other civil cases, except as is otherwise provided in this act. The court shall have power to appoint receivers for property on which liens are sought to be enforced in the same manner for the same causes and for the same purposes as in cases of foreclosure of mortgages, as well as to complete any unfinished building where the same is deemed to be to the best interest of all the parties interested.

Section 13. Defendant shall answer as in other civil actions.

(a) The owner may make any defense against the contractor by way of counter claim that he could in any civil action for the payment of money, and may have the same right of recovery on proof of such in excess of the claim of the contractor against the contractor only, but for matters not growing out of the contract recovery shall be without prejudice to the rights of the sub-contractors thereunder for payment out of the contract price or fund.

(b) In any proceedings to enforce a lien on account of wages due for labor the claimant need file only an affidavit giving the amount due, between what dates the labor was performed and the kind of labor performed, and the court shall direct the amount due for wages as therein specified to be paid within a short day to be fixed by the court, unless within 10 days after the filing of the claim the amount claimed is contested by the owner or some other party to the suit. The party making such contest shall file an affidavit which shall state his defense to the allowance of the claim, and the court shall proceed at once to hear the evidence, and determine the merits of the claim, and in the event the allowance for wages is not paid within the time fixed by the court, the court shall order the premises sold to pay the amount in such manner as it directs.

Section 14. In no case shall the want of preparation for trial of one claim delay the trial in respect to others, but trial shall be had upon issues between such parties as are prepared without references to issue between other parties; and when one creditor shall have obtained a judgment for the amount due, the court may order a sale of the premises on which the lien operates, or a part thereof, so as to satisfy the judgment: Provided, That the court may, for good cause shown, delay making any order for sale or distribution until the rights of all parties in interest are ascertained and settled by the court.

Section 15. Upon all questions arising between different contractors having liens under this act, no preference shall be given to him whose contract was made first, except the claim of any person for wages by him personally performed, shall be a preferred lien.

Section 16. No incumbrance upon land, created before or after the making of the contract for improvements under the provisions of this act, shall operate upon the building erected, or materials furnished until a lien in favor of the persons having done work or furnished material (hereinafter "lien creditor") shall have been satisfied, and upon any questions arising between incumbrancers and lien creditors, all previous incumbrances shall be preferred only to the extent of the value of the land at the time of making of the contract for improvements, but shall not be preferred to the value of any subsequent improvements, and each lien creditor shall be preferred to the value of all the subsequent improvements erected on said premises, whether or not provided by the lien creditor, and the court shall ascertain by jury or otherwise, as the case may require, what proportion of the proceeds of any sale shall be paid to the several parties in interest. All incumbrances, whether by mortgage, judgment or otherwise, charged and shown to be fraudulent, in respect to creditors, may be set aside by the court, and the premises freed and discharged from such fraudulent incumbrance. When the proceeds of a sale are insufficient to satisfy the claims of both previous incumbrancers and lien creditors, the proceeds of the sale shall be distributed as follows: (i) any previous incumbrancers shall have a paramount lien in the portion of the proceeds attributable to the value of the land at the time of making of the contract for improvements; and (ii) any lien creditors shall have a paramount lien in the portion of the proceeds attributable to the value of all subsequent improvements made to the property.

Section 17. Costs.

(a) The costs of proceedings as between all parties to the suit shall be taxed equitably against the losing party, and where taxed against more than one party, shall be so taxed against all in favor of the proper party but equitably as between themselves; and the costs, as between creditors aforesaid in contests relative to each other's claims, shall be subject to the order of the court, and the same rule shall prevail in respect to costs growing out of the proceedings against and between incumbrances.

(b) If the court specifically finds that the owner who contracted to have the improvements made failed to pay any lien claimant the full contract price, including extras, without just cause or right, the court may tax that owner, but not any other party, the reasonable attorney's fees of the lien claimant who had perfected and proven his or her claim.

(c) If the court specifically finds that a lien claimant has brought an action under this Act without just cause or right, the court may tax the claimant the reasonable attorney's fees of the owner who contracted to have the improvements made and defended the action, but not those of any other party.

(d) "Without just cause or right", as used in this Section, means a claim asserted by a lien claimant or a defense asserted by the owner who contracted to have the improvements made, which is not well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(e) This amendatory Act of 1995 applies to any mechanics lien claim that is perfected on or after the effective date of this amendatory Act of 1995.

Section 18. Whatever right or estate such owner had in the land at the time of making the contract may be sold in the same manner as other sales of real estate are made under orders of court. If any part of the premises can be separated from the residue, and sold without damage to the whole, and if the value thereof is sufficient to satisfy all the claims proved in the cause, the court may order a sale of that part.

Section 19. The court shall ascertain the amount due each lien creditor and shall direct the application of the proceeds of sale to be made to each in proportion to their several amounts, according to the provisions of this act, but the claims of all persons for labor as provided in Section 15 of this Act shall be first paid. If, upon making sale under this act of any or all premises, the proceeds of such sale shall not be sufficient to pay all claims of all parties, according to their rights, the judgment shall be credited by the amount of the sale and enforcement may proceed in favor of any creditor whose claims are not satisfied for the balance due as upon a deficiency judgment in the foreclosure of a mortgage and such deficiency judgment shall be a lien upon all real estate and other property of the party against whom it is entered to the same extent and under the same limitations as a judgment for the payment of money; and in case of excess of sales over the amount of the judgment, such excess be paid to the owner of the land, or to the person who may be entitled to the same, under the direction of the court.

Section 20. Upon all sales under this Act the right of redemption shall exist in favor of the same persons, and may be made in the same manner as is or may be provided for redemption of real estate from sales under judgments for the payment of money.

Section 21. Sub-contractor defined; lien of sub-contractor; notice; size of type; service of notice; amount of lien; default by contractor.

(a) Subject to the provisions of Section 5, every mechanic, worker or other person who shall furnish any labor, services, material, fixtures, apparatus or machinery, forms or form work for the contractor, or shall furnish any material to be employed in the process of construction as a means for assisting in the erection of the building or improvement in what is commonly termed form or form work where concrete, cement or like material is used in whole or in part, shall be known under this Act as a sub-contractor, and shall have a lien for the value thereof, with interest on such amount from the date the same is due, from the same time, on the same property as provided for the contractor, and, also, as against the creditors and assignees, and personal and legal representatives of the contractor, on the material, fixtures, apparatus or machinery furnished, and on the moneys or other considerations due or to become due from the owner under the original contract.

(b) If the legal effect of a provision in any contract between the owner and contractor or contractor and subcontractor is that no lien or claim may be filed or maintained, or that such contractor's lien shall be subordinated to the interests of any other party, and the provision is not prohibited by this Act, such provision shall be binding if made as part of an agreement not prohibited by this Act.

(c) It shall be the duty of each subcontractor who has furnished, or is furnishing, labor, services, material, fixtures, apparatus or machinery, forms or form work for an existing owner-occupied single family residence, in order to preserve his lien, to notify the occupant either personally or by certified mail, return receipt requested, addressed to the occupant or his agent of the residence within 60 days from his first furnishing labor, services, material, fixtures, apparatus or machinery, forms or form work, that he is supplying labor, services, material, fixtures, apparatus or machinery, forms or form work provided, however, that any notice given after 60 days by the subcontractor shall preserve his lien, but only to the extent that the owner has not been prejudiced by payments made prior to receipt of the notice. The notification shall include a warning to the owner that before any payment is made to the contractor, the owner should receive a waiver of lien executed by each subcontractor who has furnished labor, services, material, fixtures, apparatus or machinery, forms or form work.

The notice shall contain the name and address of the subcontractor or material man, the date he started to work or to deliver materials, the type of work done and to be done or the type of materials delivered and to be delivered, and the name of the contractor requesting the work. The notice shall also contain the following warning:

"NOTICE TO OWNER

The subcontractor providing this notice has performed work for or delivered material to your home improvement contractor. These services or materials are being used in the improvements to your residence and entitle the subcontractor to file a lien against your residence if the services or materials are not paid for by your home improvement contractor. A lien waiver will be provided to your contractor when the subcontractor is paid, and you are urged to request this waiver from your contractor when paying for your home improvements."

Such warning shall be in at least 10 point bold face type. For purposes of this Section, notice by certified mail is considered served at the time of its mailing.

(d) In no case, except as hereinafter provided, shall the owner be compelled to pay a greater sum for or on account of the completion of such house, building or other improvement than the price or sum stipulated in said original contract or agreement, unless payment be made to the contractor or to his order, in violation of the rights and interests of the persons intended to be benefited by this Act: Provided, if it shall appear to the court that the owner and contractor fraudulently, and for the purpose of defrauding sub-contractors fixed an unreasonably low price in their original contract for the erection or repairing of such house, building or other improvement, then the court shall ascertain how much of a difference exists between a fair price for labor, services, material, fixtures, apparatus or machinery, forms or form work used in said house, building or other improvement, and the sum named in said original contract, and said difference shall be considered a part of the contract and be subject to a lien. But where the contractor's statement, made as provided in Section 5, shows the amount to be paid to the sub-contractor, or party furnishing material, or the sub-contractor's statement, made pursuant to Section 22, shows the amount to become due for material; or notice is given to the owner, as provided in Sections 24 and 25, and thereafter such sub-contract shall be performed, or material to the value of the amount named in such statements or notice, shall be prepared for use and delivery, or delivered without written protest on the part of the owner previous to such performance or delivery, or preparation for delivery, then, and in any of such cases, such sub-contractor or party furnishing or preparing material, regardless of the price named in the original contract, shall have a lien therefor to the extent of the amount named in such statements or notice. In case of default or abandonment by the contractor, the sub-contractor or party furnishing material, shall have and may enforce his lien to the same extent and in the same manner that the contractor may under conditions that arise as provided for in Section 4 of this Act, and shall have and may exercise the same rights as are therein provided for the contractor.

(e) Any provision in a contract, agreement, or understanding, when payment from a contractor to a subcontractor or supplier is conditioned upon receipt of the payment from any other party including a private or public owner, shall not be a defense by the party responsible for payment to a claim brought under Section 21, 22, 23, or 28 of this Act against the party. For the purpose of this Section, "contractor" also includes subcontractor or supplier. The provisions of Public Act 87-1180 shall be construed as declarative of existing law and not as a new enactment.

Section 21.01. Failure of contractor to pay sub-contractor; fraud; penalty. Failure of contractor to pay sub-contractor; fraud; penalty. Any contractor, or if the contractor is a corporation any officer or employee thereof, who with intent to defraud induces a subcontractor, as defined in Section 21, to execute and deliver a waiver of lien for the purpose of enabling the contractor to obtain payment under his contract and upon the representation that the contractor will, from such payment, pay the subcontractor the amount due the subcontractor, and who willfully fails to pay the subcontractor in full within 30 days after such payment shall be guilty of a Class A misdemeanor.

Section 21.02. Construction Trust Funds.

(a) Money held in trust; trustees. Any owner, contractor, subcontractor, or supplier of any tier who requests or requires the execution and delivery of a waiver of mechanics lien by any person who furnishes labor, services, material, fixtures, apparatus or machinery, forms or form work for the improvement of a lot or a tract of land in exchange for payment or the promise of payment, shall hold in trust the sums received by such person as the result of the waiver of mechanics lien, as trustee for the person who furnished the labor, services, material, fixtures, apparatus or machinery, forms or form work or the person otherwise entitled to payment in exchange for such waiver.

(b) How trust moneys held; commingling. Nothing contained in this Section shall be construed as requiring moneys held in trust by an owner, contractor, subcontractor, or material supplier under this Section to be placed in a separate account. If an owner, contractor, subcontractor, or material supplier commingles moneys held in trust under this Section with other moneys, the mere commingling of the moneys does not constitute a violation of this Section.

(c) Violation of this Section. Any owner, contractor, subcontractor, or material supplier who knowingly retains or used the moneys held in trust under this Section or any part thereof, for any purpose other than to pay those for whom the moneys are held in trust, shall be liable to any person who successfully enforces his or her rights under this Section for all damages sustained by that person.

Section 22. Partners or joint contractors; sub-letting of contract; statement by sub-contractor; failure to provide; penalty. Whenever, after a contract has been made, the contractor shall associate one or more persons as partners or joint contractors, in carrying out the same, or any part thereof, the lien for labor, services, material, fixtures, apparatus or machinery, forms or form work furnished by a sub-contractor to such contractor and his partners or associates, as originally agreed upon, shall continue the same as if the sub-contract had been made with all of said partners. When the contractor shall sub-let his contract or a specific portion thereof to a sub-contractor, the party furnishing labor, services, material, fixtures, apparatus or machinery, forms or form work for such sub-contractor shall have a lien therefor; and may enforce his lien in the same manner as is herein provided for the enforcement of liens by sub-contractors. Any sub-contractor shall, as often as requested in writing by the owner, or contractor, or the agent of either, make out and give to such owner, contractor or agent, a statement of the persons furnishing labor, services, material, fixtures, apparatus or machinery, forms or form work, giving their names and how much, if anything, is due or to become due to each of them, and which statement shall be made under oath if required. If any sub-contractor shall fail to furnish such statement within 5 days after such demand, he shall forfeit to such owner or contractor the sum of \$50 for every offense, which may be recovered in a civil action and shall have no right of action against either owner or contractor until he shall furnish such statement, and the lien of such sub-contractor shall be subject to the liens of all other creditors.

Section 23. Liens against public funds.

(a) For the purpose of this Section "contractor" includes any sub-contractor; "State" includes any department, board or commission thereof, or other person financing and constructing any public improvements for the benefit of the State or any department, board or commission thereof; and "director" includes any chairman or president of any State department, board or commission, or the president or chief executive officer or such other person financing and constructing a public improvement for the benefit of the State.

(a-5) For the purpose of this Section, "unit of local government" includes any unit of local government as defined in the Illinois Constitution of 1970, and any entity, other than the State, organized for the purpose of conducting public business pursuant to the Intergovernmental Cooperation Act or the General Not For Profit Corporation Act of 1986, or where a not-for-profit corporation is owned, operated, or controlled by one or more units of local government for the purpose of conducting public business.

(b) Any person who shall furnish labor, services, material, fixtures, apparatus or machinery, forms or form work to any contractor having a contract for public improvement for any county, township, school district, city, municipality, municipal corporation, or any other unit of local government in this State, shall have a lien for the value thereof on the money, bonds, or warrants due or to become due the contractor having a contract with such county, township, school district, municipality, municipal corporation, or any other unit of local government in this State under such contract. The lien shall attach only to that portion of the money, bonds, or warrants against which no voucher or other evidence of indebtedness has been issued and delivered to the contractor by or on behalf of the county, township, school district, city, municipality, municipal corporation, or any other unit of local government as the case may be at the time of the notice.

(1) No person shall have a lien as provided in this subsection (b) unless such person shall, before payment or delivery thereof is made to such contractor, notify the clerk or secretary, as the case may be, of the county, township, school district, city, municipality, municipal corporation, or any other unit of local government by written notice of the claim for lien containing a sworn statement identifying the claimant's contract, describing the work done by the claimant, and stating the total amount due and unpaid as of the date of the notice for the work and furnish a copy of said notice at once to said contractor. The person claiming such lien may cause notification and written notice thereof to be given either by sending the written notice (by registered or certified mail, return receipt requested, with delivery limited to addressee only) to, or by delivering the written notice to the clerk or secretary, as the case may be, of the county, township, school district, city,

municipality, municipal corporation, or any other unit of local government; and the copy of the written notice which the person claiming the lien is to furnish to the contractor may be sent to, or delivered to such contractor in like manner. The notice shall be effective when received or refused by the clerk or secretary, as the case may be, of the county, township, school district, city, municipality, municipal corporation, or any other unit of local government.

(2) Provided further, that where such person has not so notified the clerk or secretary, as the case may be, of the county, township, school district, city, municipality, municipal corporation, or any other unit of local government of his claim for a lien, upon written demand of the contractor with service by certified mail (return receipt requested) and with a copy filed with the clerk or secretary, as the case may be, that person shall, within 30 days, notify the clerk or secretary, as the case may be, of the county, township, school district, city, municipality, municipal corporation, or any other unit of local government of his claim for a lien by either sending or delivering written notice in like manner as above provided for causing notification and written notice of a claim for lien to be given to such clerk or secretary, as the case may be, or the lien shall be forfeited.

(3) No official shall withhold from the contractor money, bonds, warrants, or funds on the basis of a lien forfeited as provided herein.

(4) The person so claiming a lien shall, within 90 days after serving such notice commence proceedings by complaint for an accounting, making the contractor having a contract with the county, township, school district, city, municipality, municipal corporation, or any other unit of local government and the contractor to whom such labor, services, material, fixtures, apparatus or machinery, forms or form work was furnished, parties defendant, and shall within 10 days after filing the complaint notify the clerk or secretary, as the case may be, of the county, township, school district, city, municipality, municipal corporation, or any other unit of local government of the commencement of such suit by delivering to him or them a copy of the complaint filed.

(5) Failure to commence proceedings by complaint for accounting within 90 days after serving notice of lien shall terminate the lien and no subsequent notice of lien may be given for the same claim nor may that claim be asserted in any proceedings pursuant to this Act, provided, however, that failure to file the complaint after notice of the claim for lien shall not preclude a subsequent notice or action for an amount or amounts becoming due to the lien claimant on a date after the prior notice or notices.

(6) It shall be the duty of any such clerk or secretary, as the case may be, upon receipt of the first notice herein provided for to cause to be withheld a secretary, as the case may be, upon receipt of the first notice herein provided for to cause to be withheld a sufficient amount to pay such claim for the period limited for the filing of suit plus the period for notice to the clerk or secretary of the suit, unless otherwise notified by the person claiming the lien. Upon the expiration of this period the money, bonds or warrants so withheld shall be released for payment to the contractor unless the person claiming the lien shall have instituted proceedings and delivered to the clerk or secretary, as the case may be, of the county, township, school district, city, municipality, municipal corporation, or any other unit of local government a copy of the complaint as herein provided, in which case, the amount claimed shall be withheld until the final adjudication of the suit is had. Provided, that the clerk or secretary, as the case may be, to whom a copy of the complaint is delivered as herein provided may pay over to the clerk of the court in which such suit is pending a sum sufficient to pay the amount claimed to abide the result of such suit and be distributed by the clerk according to the judgment rendered or other court order. Any payment so made to such claimant or to the clerk of the court shall be a credit on the contract price to be paid to such contractor.

(c) Any person who shall furnish labor, services, material, fixtures, apparatus or machinery, forms or form work to any contractor having a contract for public improvement for the State, may have a lien for the value thereof on the money, bonds or warrants due or about to become due the contractor having a contract with the State under the contract. The lien shall attach to only that portion of the money, bonds or warrants against which no voucher has been issued and delivered by the State.

(1) No person or party shall have a lien as provided in this subsection (c) unless such person shall, before payment or delivery thereof is made to the contractor, notify the Director or other official, whose duty it is to let such contract, written notice of a claim for lien containing a sworn statement identifying the claimant's contract, describing the work done by the claimant and stating the total amount due and unpaid as of the date of the notice for the work. The claimant shall furnish a copy of said notice at once to the contractor. The person claiming such lien may cause such written notice with sworn statement of the claim to be given either by

sending such notice (by registered or certified mail, return receipt requested, with delivery limited to addressee only) to, or by delivering such notice to the Director or other official of the State whose duty it is to let such contract; and the copy of such notice which the person claiming the lien is to furnish to the contractor may be sent to, or delivered to such contractor in like manner. The notice shall be effective when received or refused by the Director or other official whose duty it is to let the contract.

(2) Provided, that where such person has not so notified the Director or other official of the State, whose duty it is to let such contract, of his claim for a lien, upon written demand of the contractor, with service by certified mail (return receipt requested) and with a copy filed with such Director or other official of the State, that person shall, within 30 days, notify the Director or other official of the State, whose duty it is to let such contract, of his claim for a lien by either sending or delivering written notice in like manner as above provided for giving written notice with sworn statement of claim to such Director or official, or the lien shall be forfeited.

(3) No public official shall withhold from the contractor money, bonds, warrants or funds on the basis of a lien forfeited as provided herein.

(4) The person so claiming a lien shall, within 90 days after serving such notice, commence proceedings by complaint for an accounting, making the contractor having a contract with the State and the contractor to whom such labor, services, material, fixtures, apparatus or machinery, forms or form work was furnished, parties defendant, and shall, within 10 days after filing the suit notify the Director of the commencement of such suit by delivering to him a copy of the complaint filed; provided, if money appropriated by the General Assembly is to be used in connection with the construction of such public improvement, that suit shall be commenced and a copy of the complaint delivered to the Director not less than 15 days before the date when the appropriation from which such money is to be paid, will lapse.

(5) Failure to commence proceedings by complaint for accounting within 90 days after serving notice of lien pursuant to this subsection shall terminate the lien and no subsequent notice of lien may be given for the same claim nor may that claim be asserted in any proceedings pursuant to this Act, provided, however, that failure to file suit after notice of a claim for lien shall not preclude a subsequent notice or action for an amount or amounts becoming due to the lien claimant on a date after the prior notice or notices.

(6) It shall be the duty of the Director, upon receipt of the written notice with sworn statement as herein provided, to withhold payment of a sum sufficient to pay the amount of such claim, for the period limited for the filing of suit plus the period for the notice to the Director, unless otherwise notified by the person claiming the lien. Upon the expiration of this period the money, bonds, or warrants so withheld shall be released for payment to the contractor unless the person claiming the lien shall have instituted proceedings and delivered to the Director a copy of the complaint as herein provided, in which case, the amount claimed shall be withheld until the final adjudication of the suit is had. Provided, the Director or other official may pay over to the clerk of the court in which such suit is pending, a sum sufficient to pay the amount claimed to abide the result of such suit and be distributed by the clerk according to the judgment rendered or other court order. Any payment so made to such claimant or to the clerk of the court shall be a credit on the contract price to be paid to such contractor.

(d) Any officer of the State, county, township, school district, city, municipality, municipal corporation, or any other unit of local government violating the duty hereby imposed upon him shall be liable on his official bond to the claimant giving notice as provided in this Section for the damages resulting from such violation, which may be recovered in a civil action in the circuit court. There shall be no preference between the persons giving such notice, but all shall be paid pro rata in proportion to the amount due under their respective contracts.

(e) In the event a suit to enforce a claim based on a notice of claim for lien is commenced in accordance with this Section, and the suit is subsequently dismissed, the lien for the work claimed under the notice of claim for lien shall terminate 30 days after the effective date of the order dismissing the suit unless the lien claimant shall file a motion to reinstate the suit, a motion to reconsider, or a notice of appeal within the 30-day period. Notwithstanding the foregoing, nothing contained in this Section shall prevent a public body from paying a lien claim in less than 30 days after dismissal.

(f) Unless the contract with the State, county, township, school district, city, municipality, municipal corporation, or any other unit of local government otherwise provides, no lien for material shall be defeated because of lack of proof that the material after the delivery thereof, actually entered into the construction of the building or improvement, even if it be shown that the material was not actually used in the construction of

the building or improvement so long as it is shown that the material was delivered either (i) to the owner or its agent for that building or improvement, to be used in that building or improvement or (ii) pursuant to the contract, at the place where the building or improvement was being constructed or some other designated place, for the purpose of being used in construction or for the purpose of being employed in the process of construction as a means for assisting in the erection of the building or improvement in what is commonly termed forms or form work where concrete, cement, or like material is used, in whole or in part.

Section 24. Written notice by sub-contractor; service; when notice not necessary; form of notice.

(a) Sub-contractors, or parties furnishing labor, materials, fixtures, apparatus, machinery, or services, may at any time after making his or her contract with the contractor, and shall within 90 days after the completion thereof, or, if extra or additional work or material is delivered thereafter, within 90 days after the date of completion of such extra or additional work or final delivery of such extra or additional material, cause a written notice of his or her claim and the amount due or to become due thereunder, to be sent by registered or certified mail, with return receipt requested, and delivery limited to addressee only, to or personally served on the owner of record or his agent or architect, or the superintendent having charge of the building or improvement and to the lending agency, if known; and such notice shall not be necessary when the sworn statement of the contractor or subcontractor provided for herein shall serve to give the owner notice of the amount due and to whom due, but where such statement is incorrect as to the amount, the subcontractor or material man named shall be protected to the extent of the amount named therein as due or to become due to him or her. For purposes of this Section, notice by registered or certified mail is considered served at the time of its mailing.

The form of such notice may be as follows: To (name of owner): You are hereby notified that I have been employed by (the name of contractor) to (state here what was the contract or what was done, or to be done, or what the claim is for) under his or her contract with you, on your property at (here give substantial description of the property) and that there was due to me, or is to become due (as the case may be) therefor, the sum of \$.....

Dated at this day of,

(Signature).....

(b) The serving of notice pursuant to subsection (a) of this Section shall not constitute an admission by the lien claimant that its status is that of subcontractor if it is later determined that the party with whom the lien claimant contracted was the owner or an agent of the owner.

Section 25. Notice to persons not found or not residing in county.

(a) In all cases where the owner of record, his or her agent, architect, or superintendent or lending agency, if known, cannot, upon reasonable diligence, be found in the county in which said improvement is made, or shall not reside therein, the sub-contractor or person furnishing labor, services, material, fixtures, apparatus or machinery, forms or form work may give notice to such persons who cannot be found by filing within 90 days after the completion of his or her contract with the contractor, or if extra or additional work or material is delivered thereafter, within 90 days after the date of completion of such extra or additional work or final delivery of such extra or additional material, in the office of the recorder a claim for lien verified by the affidavit of himself or herself, or his or her agent or employee, which shall consist of a brief statement of his or her contract or demand, and the balance due after allowing all credits, and a sufficient correct description of the lot, lots or tract of land to identify the same. An itemized account shall not be necessary.

(b) The notice recorded pursuant to subsection (a) of this Section shall satisfy the notice requirements of Section 24 of this Act only as to any owner of record, his or her agent, architect, superintendent, or lending agency, if known, who or which cannot, upon reasonable diligence, be found or shall not reside in the county in which said improvement is made. In the event that notice is recorded as provided herein, if such notice complies with Section 7 of this Act it shall also be deemed a claim for lien recorded pursuant to Section 7 of this Act.

(c) The recording of notice pursuant to subsection (a) of this Section shall not constitute an admission by the lien claimant that its status is that of subcontractor if it is later determined that the party with whom the lien claimant contracted was the owner or an agent of the owner.

Section 26. Claim for wages as laborer preferred. The claim of any person for wages under Sections 21 and 22 of this Act shall be a preferred lien.

Section 27. When the owner or his agent is notified as provided in this Act, he shall retain from any money due or to become due the contractor, an amount sufficient to pay all demands that are or will become due such sub-contractor, tradesman, materialman, mechanic, or worker of whose claim he is notified, and shall pay over the same to the parties entitled thereto.

Such payment shall be as follows:

First - All claims for wages shall be paid in full.

Second - The claims of tradesmen, materialmen and sub-contractors, who are entitled to liens pro rata, in proportion to the amount due them respectively. All payments made as directed shall, as between such owner and contractor, be considered the same as if paid to such contractor. Any payment made by the owner to the contractor after such notice, without retaining sufficient money to pay such claims, shall be considered illegal and made in violation of the rights of the laborers and sub-contractors and the rights of such laborers and sub-contractors to a lien shall not be affected thereby, but the owner shall not be held liable to any laborer and sub-contractor or other person whose name is omitted from the statement provided for in Sections 5 and 22 of this Act, nor for any larger amount than the sum therein named as due such person (provided such omission is not made with the knowledge or collusion of the owner), unless previous thereto or to his payment to his contractor, he shall be notified, as herein provided, by such person of their claim and the true amount thereof.

Third - The balance, if any, to the contractor.

Section 28. Suits by laborers, materialmen or sub-contractors. If any money due to the laborers, materialmen, or sub-contractors be not paid within 10 days after his notice is served as provided in Sections 5, 24, and 25, then such person may file a claim for lien or file a complaint and enforce such lien within the same limits as to time and in such other manner as hereinbefore provided for the contractor in Section 7 and Sections 9 to 20 inclusive, of this Act, or he may sue the owner and contractor jointly for the amount due in the circuit court, and a personal judgment may be rendered therein, as in other cases. In such actions, as in suits to enforce the lien, the owner shall be liable to the plaintiff for no more than the pro rata share that such person would be entitled to with other sub-contractors out of the funds due to the contractor from the owner or one knowingly permitted by the owner to contract for such improvements and the contractor, except as hereinbefore provided for laborers and materialmen, and such action shall be maintained against the owner only in case the plaintiff establishes a right to the lien. All suits and actions by sub-contractors shall be against both contractor and owner jointly, and no judgment shall be rendered therein until both are duly brought before the court by process or publication, and such process may be served and publication made as to all persons except the owners as in other civil actions. All such judgments, where the lien is established shall be against both jointly, but shall be enforced against the owner only to the extent that he is liable under his contract as by this Act provided, and shall recite the date from which the lien thereof attached according to the provisions of Sections 1 to 20 of this Act; but this shall not preclude a judgment against the contractor, personally, where the lien is defeated.

Section 30. Multiple liens; insufficient funds; hearing; judgment. If there are several liens under Sections 21 and 22 of this Act upon the same premises, and the owner or any person having such a lien shall fear that there is not a sufficient amount coming to the contractor to pay all such liens, the owner or any one or more persons having such lien may file his, her or their complaint in the circuit court of the proper county, stating such fact and such other facts as may be sufficient to a full understanding of the rights of the parties. The contractor and all persons having liens upon or who are interested in the premises, so far as the same are known to or can be ascertained by the plaintiff, upon diligent inquiry shall be made parties. Upon the hearing the court shall find the amount due from the owner to the contractor, and the amount due to each of the persons having liens, and in case the amount found to be due to the contractor shall be insufficient to discharge all the liens in full, the amount so found in favor of the contractor shall be divided between the persons entitled to such liens pro rata after the payment of all claims for wages in proportion to the amounts so found to be due them respectively. If the amount so found to be due to the contractor shall be sufficient to pay the liens in full, the same shall be so ordered. The premises may be sold as in other cases under this Act. The parties to such action shall prosecute

the same under like requirements as are directed in Section 11 of this Act, and all persons who shall be duly notified of such proceedings, and who shall fail to prove their claims, whether the same be in judgment against the owner or not, shall forever lose the benefit of and be precluded from their liens and all claims against the owner. Upon the filing of such complaint the court may, on the motion of any person interested, and shall, upon final judgment stay further proceedings upon any action against the owner on account of such liens, and costs in such cases shall be adjusted as provided for in Section 17 of this Act.

Section 31. Should the contractor, for any cause, fail to complete his or her contract, any person entitled to a lien under this Act may file a complaint against the owner and contractor, setting forth the nature of his or her claim, the amount due, as near as may be, and the names of the parties employed on such house or other improvement subject to liens; and a notice of such action shall be served on the persons therein named, and the parties shall have their claim adjudicated. The premises may be sold as in other cases under this act. The parties to such action shall prosecute the same under like requirements as are directed in section 11 of this Act.

Section 32. Payments to contractor by owner. No payments to the contractor or to his order of any money or other considerations due or to become due to the contractor shall be regarded as rightfully made, as against the sub-contractor, laborer, or party furnishing labor, services, material, fixtures, apparatus or machinery, forms or form work if made by the owner without exercising and enforcing the rights and powers conferred upon him in Sections 5, 21 and 22 of this Act.

Section 34. Notice to commence suit.

(a) Upon written demand of the owner, lienor, a recorder under Section 3-5010.8 of the Counties Code, or any person interested in the real estate, or their agent or attorney, served on the person claiming the lien, or his agent or attorney, requiring suit to be commenced to enforce the lien or answer to be filed in a pending suit, suit shall be commenced or answer filed within 30 days thereafter, or the lien shall be forfeited. Such service may be by registered or certified mail, return receipt requested, or by personal service.

(b) A written demand under this Section must contain the following language in at least 10 point bold face type: "Failure to respond to this notice within 30 days after receipt, as required by Section 34 of the Mechanics Lien Act, shall result in the forfeiture of the referenced lien."

Section 34.5. Mechanics lien administrative adjudication.

(a) Notwithstanding any other provision in this Act, a county's code hearing unit may adjudicate the validity of a mechanics lien under Section 3-5010.8 of the Counties Code. If the recorder shows by clear and convincing evidence that the lien being adjudicated is an expired lien, the administrative law judge shall rule the lien is forfeited under this Act and that the lien no longer affects the chain of title of the property in any way.

(b) This Section is repealed on January 1, 2022.

Section 35. Satisfaction or release; recording; neglect; penalty.

(a) Whenever a claim for lien has been filed with the recorder of deeds, either by the contractor or sub-contractor, and is paid with cost of filing same, or where there is a failure to institute suit to enforce the same after demand as provided in the preceding Section within the time by this Act limited the person filing the same or someone by him duly authorized in writing so to do, shall acknowledge satisfaction or release thereof, in writing, on written demand of the owner, lienor, or any person interested in the real estate, or his or her agent or attorney, and on neglect to do so for 10 days after such written demand he or she shall be liable to the owner for the sum of \$2,500, which may be recovered in a civil action together with the costs and the reasonable attorney's fees of the owner, lienor, or other person interested in the real estate, or his or her agent or attorney incurred in bringing such action.

(b) Such a satisfaction or release of lien may be filed with the recorder of deeds in whose office the claim for lien had been filed and when so filed shall forever thereafter discharge and release the claim for lien and shall bar all actions brought or to be brought thereupon.

(c) The release of lien shall have the following imprinted thereon in bold letters at least 1/4 inch in height: "FOR THE PROTECTION OF THE OWNER, THIS RELEASE SHOULD BE FILED WITH THE RECORDER IN WHOSE

OFFICE THE CLAIM FOR LIEN WAS FILED." The Recorder in whose office the claim for lien had been filed, upon receipt of a release and the payment of the recording fee, shall record the release.

Section 36. Any owner, contractor, sub-contractor or other person who shall purchase materials on credit and represent at the time of purchase that the same are to be used in a designated building or buildings, or other improvement, and shall thereafter sell, use or cause to be used the said materials in the construction of, or remove the same to any building or improvement other than that designated, or dispose of the same for any purpose, without the written consent of the person of whom the materials were purchased, with intent to defraud such person, shall be deemed guilty of a Class A misdemeanor.

Section 37. Any architect, contractor, sub-contractor, materialman, or other person furnishing services, labor or material for the purpose of or in constructing, building, altering, repairing or ornamenting a boat, barge or other water craft or mobile home, shall have a lien on such boat, barge or other water craft or mobile home for the value of such services, labor or material in the same manner as in this act provided for services, labor or material furnished by such parties for the purpose of building, altering, repairing or ornamenting a house or other building. And such lien may be established and enforced in the same manner as liens are established and enforced under this act, and the parties shall be held to the same obligations, duties and liabilities as in case of a contract for building, altering, repairing or ornamenting a house or other building.

Section 38. When claims for lien are filed pursuant to the provisions of Sections 7, 25 and 28, the Recorder shall affix thereto a certificate of the date of filing the same, (similar to the certificate affixed to recorded instruments) and make an abstract thereof in a book kept for that purpose and properly indexed, containing the name of the person filing the lien, the amount of the lien, the date of filing, the name of the person against whom the lien is filed, and a description of the property charged with the lien, and if satisfied or released of record the date of filing said satisfaction or release. When a satisfaction or release is filed the Recorder shall affix a certificate of the date of filing similar to that affixed to the claim for lien.

For filing a claim for lien and complying with the provisions of this act the recorder shall charge a fee of \$12 for the first 4 pages thereof, plus \$1 for each additional page thereof, plus \$1 for each additional document number therein noted, and for filing a satisfaction or release thereof and affixing his certificate thereto he shall charge a fee of \$12 for the first 4 pages thereof, plus \$1 for each additional page thereof, plus \$1 for each additional document number therein noted.

Section 38.1. Substitution of bond for lien.

(a) As used in this Section:

(1) "Applicant" means:

(A) an owner, other lien claimant, or other person having an interest in the property against which a lien claim under this Act is asserted;

(B) an association representing owners organized under any statute or to which the Common Interest Community Association Act applies; or

(C) any person who may be liable for the payment of a lien claim, including an owner, former owner, association representing owners organized under any statute or to which the Common Interest Community Association Act applies, or the contractor or subcontractor.

(2) "Eligible surety bond" means a surety bond that meets all of the following requirements:

(A) it specifically states that the principal and surety thereunder submit to the jurisdiction of the circuit court of the county where the property being improved is located and that a final non-appealable judgment or decree entered in a proceeding in favor of the lien claimant based on the lien claim that is the subject of an eligible surety bond shall constitute a judgment against the principal and surety of the bond for the amount found due to the lien claimant, including interest and attorney's fees, limited as to the principal and surety to the full amount of the bond;

(B) it continues in effect until the complete satisfaction of the adjudicated amount due under the lien claim or the payment of the full amount of the bond or to a final determination, and the expiration of all appeal periods, that the lien claim is invalid, void, has been released by the lien

claimant, or the time to enforce the lien claim has expired without the required action by the lien claimant;

(C) it is in an amount equal to 175% of the amount of the lien claim;

(D) it has as its surety a company that has a certificate of authority from the Department of Insurance specifically authorizing the company to execute surety bonds;

(E) the surety has a current financial strength rating of not less than A with no rating modifier, an outlook which is either positive or stable, and a financial size category of not less than IX, as rated by A.M. Best Company, Inc.; and

(F) if property affected by a mechanics lien is in a judicial circuit that has its own list of approved sureties, the bond shall be issued by a surety company specifically authorized to issue surety bonds for that circuit court by order or rule.

(3) "Lien claim" means a claim, excluding interest and attorney's fees, on account of which (A) a notice or amended notice of claim for lien under Section 24 of this Act has been served; (B) a claim or amended claim for lien under Section 7 of this Act has been recorded; or (C) a suit to enforce a lien under this Act, including, but not limited to, an action under Section 9, 27, or 28 of this Act, has been filed. Unless otherwise indicated in this Section, "lien claim" is the lien claim to be affected by an eligible surety bond.

(4) "Lien claimant" means the party whose lien claim is to be affected by an eligible surety bond.

(5) "Prevailing party" means a lien claimant that is awarded a judgment equal to at least 75% of the amount of its lien claim, or the principal of the bond if the lien claimant is awarded a judgment equal to less than 25% of the amount of its lien claim; otherwise, no party is the prevailing party. For purposes of determining the prevailing party, the amount of the lien claim shall be reduced by any payments received by the lien claimant from any source before the entry of judgment or otherwise upon petition by the lien claimant, but only for good cause shown. If any party makes a payment to the lien claimant within 5 months of the filing of a complaint under this Section, the principal on the bond may petition the court for a reduction of the bond equal to the amount of the payment made.

Except as otherwise expressly provided in this Section, the terms not expressly defined in this Section have the same meaning as they have under other provisions of this Act.

(b) This Section applies to liens arising under Section 1 or 21 of this Act and to claims or actions arising under Section 9, 27, or 28 of this Act.

(c) An applicant may file a petition to substitute a bond for the property subject to a lien claim with the clerk of the circuit court of the county in which the property against which the lien claim is asserted is located, or if there is a pending action to enforce the lien claim, an applicant may at any time prior to 5 months after the filing of a complaint or counterclaim by a mechanics lien claimant to enforce its mechanics lien claim. The petition shall be verified and shall include:

(1) the name and address of the applicant and the applicant's attorney, if any;

(2) the name and address of the lien claimant;

(3) if there is a suit to enforce the lien claim, the name of the attorney of record for the lien claimant, or if no suit has been filed but a lien claim has been recorded by the lien claimant, the name of the preparer of the lien claim;

(4) the name and address of the owner of record of any real estate subject to the lien claim or the name and address of any condominium association or association to which the Common Interest Community Association Act applies representing owners of record if the association is an obligor under the bond;

(5) a description of the property subject to the lien claim and, if the property includes real estate, both a common and legal description of the real estate, including the address, if any;

(6) an attached copy of the lien claim which includes the date of its recording, where it was recorded, and the number under which it was recorded if there is no pending proceeding to enforce the lien claim;

(7) an attached copy of the proposed eligible surety bond;

(8) a certified copy of the surety's certificate of authority from the Department of Insurance or other State agency charged with the duty to issue such a certificate; and

(9) an undertaking by the applicant to replace the bond with another eligible surety bond in the event that the proposed eligible surety bond at any time ceases to be an eligible surety bond.

(d) The person filing a petition under this Section shall personally serve or send via certified mail, return receipt requested, to each person whose name and address is stated in the petition and his or her attorney of record in a pending action on the lien claim, a copy of the petition attached together with the following notice:

"PLEASE TAKE NOTICE that on (date), the undersigned,, filed a petition to substitute a bond for property subject to a lien claim, a copy of which is attached to this notice.

PLEASE TAKE FURTHER NOTICE that if you fail to file an objection to the substitution of a bond for the lien claim with the clerk of the circuit court of County under general number or case number, within 30 days after you receive this notice or 33 days after this notice is mailed by certified mail, whichever date is earlier, you will have waived your right to object and an order will be entered substituting the security of the bond for the property securing the lien claim and discharging the property described in the petition as being subject to the lien, such as the real estate and the moneys or other considerations due or to become due from the owner to the contractor under the original contract giving rise to the lien claim."

(e) If no objection is filed to the substitution of the proposed eligible surety bond for the property securing the lien claim within 30 days after all persons entitled to notice under subsection (d) of this Section have either received the notice or have been served with the notice, or have waived any objections to the substitution, if the petition complies with the requirements of this Section, the court, on ex parte motion of the petitioner, shall, if the court finds that the proposed bond is in fact an eligible surety bond, enter an order:

- (1) substituting the eligible surety bond for the property securing the lien claim; and
- (2) substituting the lien claimant's right to recover on the bond for the lien claimant's causes of action

that could be asserted by the lien claimant under Section 9, 27, or 28 of this Act.

(f) If an objection is filed within 30 days of service of notice required by this Section, the petitioner may, upon notice to all parties to whom the notice was required to be served, move for a hearing as to the adequacy of the proposed eligible surety bond. The burden shall be upon the petitioner to establish prima facie that the proposed surety bond is an eligible surety bond. If it is established prima facie that the bond is an eligible surety bond, the burden is on the objector to prove that a proposed surety bond is not an eligible surety bond. If at the conclusion of the hearing the court finds that the proposed bond is in fact an eligible surety bond, it shall enter an order:

- (1) substituting the eligible surety bond for the property securing the lien claim; and
- (2) substituting the lien claimant's right to recover on the bond for the lien claimant's causes of action

that could be asserted by the lien claimant under Section 9, 27, or 28 of this Act.

(g) If the court enters an order discharging as security for the lien claim the real estate and claims under Sections 1, 9, 21, 27, and 28 of this Act, and substitutes the eligible surety bond as security for the lien claim, the petitioner shall:

(1) send copies of the order to the lien claimant and all persons who were to receive copies of the petition and, if there is a pending proceeding to enforce the lien claim, to all parties who have appeared in the proceeding; and

(2) record a copy of the order, together with an executed copy of the approved eligible surety bond, with the recorder of deeds of any county where the property is located.

(h) If the eligible surety bond is approved either before or after any suit is brought to enforce the lien claim, the action on the bond shall be in equity against the principal and surety of the bond. If the eligible surety bond is approved and a proceeding to enforce the lien claim is pending, the bond principals and sureties shall, by approval of the bond, ipso facto become parties to the proceeding. All other parties to the lien claim count or counts may be dismissed. An action under this Section does not preclude a claimant from bringing any other actions that do not arise under this Act.

(i) Subject to the defenses allowable under subsection (j) of this Section, the principal and surety of a surety bond shall be jointly and severally liable to the lien claimant for the amount that the lien claimant would have been entitled to recover under this Act if no surety bond had been furnished, subject to the limitation of liability of the surety to the face amount of the bond. The prevailing party in an action brought under this Section shall be awarded its reasonable attorney's fees, but the attorney's fees for a lien claimant that is a prevailing party shall be limited to the amount remaining on the bond after the payment of the claim and interest, and the

attorney's fees awarded to a bond principal shall be limited to 50% of the amount of the lien claim. Judgment in favor of the lien claimant and against the principal and surety shall be entered for the amount of their liability to the lien claimant.

(j) The principal and surety of the bond may assert only those defenses that could have been asserted against the lien claim by the principal of the eligible surety bond or the owner of record of the real estate at the time the contractor's contract under which the lien claimant is claiming was let as if no surety bond had been issued.

(k) Liability of the principal and surety on a bond that has ceased to be an eligible surety bond shall continue until a court order is entered replacing the bond with another eligible surety bond. Even if a bond ceases to be an eligible surety bond, the original bond remains in effect as substitute security until it is replaced.

(l) It is the express intent of the General Assembly in enacting this Section that the entry of an order under this Section substitutes an action on the bond for the actions the lien claimant would otherwise have under Sections 9, 17, 27, and 28 of this Act.

Section 39. This act is and shall be liberally construed as a remedial act.

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