

HB2615



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2615

by Rep. Margo McDermed

SYNOPSIS AS INTRODUCED:

770 ILCS 60/5.1 new

Amends the Mechanics Lien Act. Provides that, with specified exceptions, an owner, contractor, or subcontractor may not, by contract or otherwise, waive, affect, or impair any other claimant's rights unless the claimant executes and delivers a waiver and release under specified conditions and in conformance with specified statutory form language.

LRB100 07826 HEP 17894 b

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Mechanics Lien Act is amended by adding
5 Section 5.1 as follows:

6 (770 ILCS 60/5.1 new)

7 Sec. 5.1. Waivers.

8 (a) This Section applies to a work of improvement governed
9 by this Act.

10 (b) Notwithstanding any other provision of law, an owner,
11 contractor, or subcontractor may not, by contract or otherwise,
12 wave, affect, or impair any other claimant's rights under this
13 Act, whether with or without notice, and any term of a contract
14 that purports to do so is void and unenforceable except as
15 provided in this Section.

16 (c) A claimant's waiver and release does not release the
17 owner, construction lender, or surety on a payment bond from a
18 lien or claim unless both of the following conditions are
19 satisfied:

20 (1) The waiver and release is in substantially the form
21 provided in this Section and is signed by the claimant.

22 (2) If the release is a conditional release, there is
23 evidence of payment to the claimant. Evidence of payment

1 may be either of the following:

2 (A) The claimant's endorsement on a single or joint
3 payee check that has been paid by the financial
4 institution on which it was drawn.

5 (B) Written acknowledgment of payment by the
6 claimant.

7 (d) An oral or written statement purporting to waive,
8 release, impair, or otherwise adversely affect a lien or claim
9 is void and unenforceable and does not create an estoppel or
10 impairment of the lien or claim unless either of the following
11 conditions is satisfied:

12 (1) The statement is pursuant to a waiver and release
13 under this Section.

14 (2) The claimant has actually received payment in full
15 for the claim.

16 (e) A claimant may reduce the amount of, or release in its
17 entirety, a stop payment notice. The reduction or release shall
18 be in writing and may be given in a form other than a waiver and
19 release form provided in this Section. The writing shall
20 identify whether it is a reduction of the amount of the stop
21 payment notice, or a release of the notice in its entirety. If
22 the writing is a reduction, it shall state the amount of the
23 reduction, and the amount to remain withheld after the
24 reduction. A claimant's reduction or release of a stop payment
25 notice has the following effect:

26 (1) The reduction or release releases the claimant's

1 right to enforce payment of the claim stated in the notice
2 to the extent of the reduction or release.

3 (2) The reduction or release releases the person given
4 the notice from the obligation to withhold funds pursuant
5 to the notice to the extent of the reduction or release.

6 A reduction or release under this subsection does not
7 preclude the claimant from giving a subsequent stop payment
8 notice that is timely and proper. The reduction or release does
9 not release any right of the claimant other than the right to
10 enforce payment of the claim stated in the stop payment notice
11 to the extent of the reduction or release.

12 (f) This Section does not affect the enforceability of
13 either an accord and satisfaction concerning a good faith
14 dispute or an agreement made in settlement of an action pending
15 in court if the accord and satisfaction or agreement and
16 settlement make specific reference to the lien or claim.

17 (g) If a claimant is required to execute a waiver and
18 release in exchange for, or in order to induce payment of, a
19 progress payment and the claimant is not, in fact, paid in
20 exchange for the waiver and release or a single payee check or
21 joint payee check is given in exchange for the waiver and
22 release, the waiver and release is null, void, and
23 unenforceable unless it is in substantially the following form:

24 CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

25 NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT
26 NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF

1 PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS
2 SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

3 Identifying Information

4 Name of Claimant:

5 Name of Customer:

6 Job Location:

7 Owner:

8 Through Date:

9 Conditional Waiver and Release

10 This document waives and releases lien, stop payment
11 notice, and payment bond rights the claimant has for labor and
12 service provided, and equipment and material delivered, to the
13 customer on this job through the Through Date of this document.
14 Rights based upon labor or service provided, or equipment or
15 material delivered, pursuant to a written change order that has
16 been fully executed by the parties prior to the date that this
17 document is signed by the claimant, are waived and released by
18 this document, unless listed as an Exception below. This
19 document is effective only on the claimant's receipt of payment
20 from the financial institution on which the following check is
21 drawn:

22 Maker of Check:

23 Amount of Check: \$

24 Check Payable to:

25 Exceptions

26 This document does not affect any of the following:

- 1 (1) Retentions.
- 2 (2) Extras for which the claimant has not received payment.
- 3 (3) The following progress payments for which the claimant
- 4 has previously given a conditional waiver and release but
- 5 has not received payment:

6 Date(s) of waiver and release:

7 Amount(s) of unpaid progress payment(s): \$

- 8 (4) Contract rights, including: (i) a right based on
- 9 rescission, abandonment, or breach of contract; and (ii)
- 10 the right to recover compensation for work not compensated
- 11 by the payment.

Signature

13 Claimant's Signature:

14 Claimant's Title:

15 Date of Signature:

16 (h) If the claimant is required to execute a waiver and

17 release in exchange for, or in order to induce payment of, a

18 progress payment and the claimant asserts in the waiver that

19 the claimant has, in fact, been paid the progress payment, the

20 waiver and release shall be null, void, and unenforceable

21 unless it is in substantially the following form, with the text

22 of the "Notice to Claimant" in at least as large a type as the

23 largest type otherwise in the form:

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

25 NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN,

26 STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY

1 AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS.
 2 THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN
 3 IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A
 4 CONDITIONAL WAIVER AND RELEASE FORM.

5 Identifying Information

6 Name of Claimant:
 7 Name of Customer:
 8 Job Location:
 9 Owner:
 10 Through Date:

11 Unconditional Waiver and Release

12 This document waives and releases lien, stop payment
 13 notice, and payment bond rights the claimant has for labor and
 14 service provided, and equipment and material delivered, to the
 15 customer on this job through the Through Date of this document.
 16 Rights based upon labor or service provided, or equipment or
 17 material delivered, pursuant to a written change order that has
 18 been fully executed by the parties prior to the date that this
 19 document is signed by the claimant, are waived and released by
 20 this document, unless listed as an Exception below. The
 21 claimant has received the following progress payment: \$

22 Exceptions

23 This document does not affect any of the following:

- 24 (1) Retentions.
- 25 (2) Extras for which the claimant has not received payment.
- 26 (3) Contract rights, including: (i) a right based on

1 rescission, abandonment, or breach of contract; and (2) the
2 right to recover compensation for work not compensated by the
3 payment.

4 Signature

5 Claimant's Signature:

6 Claimant's Title:

7 Date of Signature:

8 (i) If the claimant is required to execute a waiver and
9 release in exchange for, or in order to induce payment of, a
10 final payment and the claimant is not, in fact, paid in
11 exchange for the waiver and release or a single payee check or
12 joint payee check is given in exchange for the waiver and
13 release, the waiver and release shall be null, void, and
14 unenforceable unless it is in substantially the following form:

15 CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

16 NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT
17 NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF
18 PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS
19 SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

20 Identifying Information

21 Name of Claimant:

22 Name of Customer:

23 Job Location:

24 Owner:

25 Conditional Waiver and Release

26 This document waives and releases lien, stop payment

1 notice, and payment bond rights the claimant has for labor and
 2 service provided, and equipment and material delivered, to the
 3 customer on this job. Rights based upon labor or service
 4 provided, or equipment or material delivered, pursuant to a
 5 written change order that has been fully executed by the
 6 parties prior to the date that this document is signed by the
 7 claimant, are waived and released by this document, unless
 8 listed as an Exception below. This document is effective only
 9 on the claimant's receipt of payment from the financial
 10 institution on which the following check is drawn:

11 Maker of Check:
 12 Amount of Check: \$
 13 Check Payable to:

14 Exceptions

15 This document does not affect any of the following:

16 Disputed claims for extras in the amount of: \$

17 Signature

18 Claimant's Signature:
 19 Claimant's Title:
 20 Date of Signature:

21 (j) If the claimant is required to execute a waiver and
 22 release in exchange for, or in order to induce payment of, a
 23 final payment and the claimant asserts in the waiver that the
 24 claimant has, in fact, been paid the final payment, the waiver
 25 and release shall be null, void, and unenforceable unless it is
 26 in substantially the following form, with the text of the

1 "Notice to Claimant" in at least as large a type as the largest
2 type otherwise in the form:

3 UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

4 NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN,
5 STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY
6 AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS.
7 THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN
8 IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A
9 CONDITIONAL WAIVER AND RELEASE FORM.

10 Identifying Information

11 Name of Claimant:
12 Name of Customer:
13 Job Location:
14 Owner:

15 Unconditional Waiver and Release

16 This document waives and releases lien, stop payment
17 notice, and payment bond rights the claimant has for all labor
18 and service provided, and equipment and material delivered, to
19 the customer on this job. Rights based upon labor or service
20 provided, or equipment or material delivered, pursuant to a
21 written change order that has been fully executed by the
22 parties prior to the date that this document is signed by the
23 claimant, are waived and released by this document, unless
24 listed as an Exception below. The claimant has been paid in
25 full.

26 Exceptions

1 This document does not affect the following:

2 Disputed claims for extras in the amount of: \$

3 Signature

4 Claimant's Signature:

5 Claimant's Title:

6 Date of Signature: