

SB0062



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB0062

Introduced 1/16/2019, by Sen. Cristina Castro

SYNOPSIS AS INTRODUCED:

55 ILCS 5/3-5010.8

Amends the Recorder Division of the Counties Code. Modifies how a county recorder determines if a lien is an expired lien under a county's demand and referral program by providing that a lien is expired if a suit to enforce the lien has not been commenced or a counterclaim has not been filed by the lienholder within 2 years after the completion date of the contract as specified in the recorded mechanics lien. Provides that the 2-year period shall be increased to the extent that an automatic stay under specified provisions of the United States Bankruptcy Code stays a suit or counterclaim to foreclose the lien or, if a work completion date is not specified in the recorded lien, then the work completion date is the date of recording of the mechanics lien. Effective immediately.

LRB101 04056 AWJ 49064 b

A BILL FOR

1 AN ACT concerning local government.

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

4 Section 5. The Counties Code is amended by changing Section
5 3-5010.8 as follows:

6 (55 ILCS 5/3-5010.8)

7 (This Section may contain text from a Public Act with a
8 delayed effective date)

9 (Section scheduled to be repealed on January 1, 2022)

10 Sec. 3-5010.8. Mechanics lien demand and referral pilot
11 program.

12 (a) Legislative findings. The General Assembly finds that
13 expired mechanics liens on residential property, which cloud
14 title to property, are a rapidly growing problem throughout the
15 State. In order to address the increase in expired mechanics
16 liens and, more specifically, those that have not been released
17 by the lienholder, a recorder may establish a process to demand
18 and refer mechanics liens that have been recorded but not
19 litigated or released in accordance with the Mechanics Lien Act
20 to an administrative law judge for resolution or demand that
21 the lienholder commence suit or forfeit the lien.

22 (b) Definitions. As used in this Section:

23 "Demand to Commence Suit" means the written demand

1 specified in Section 34 of the Mechanics Lien Act.

2 "Mechanics lien" and "lien" are used interchangeably in
3 this Section.

4 "Notice of Expired Mechanics Lien" means the notice a
5 recorder gives to a property owner under subsection (d)
6 informing the property owner of an expired lien.

7 "Notice of Referral" means the document referring a
8 mechanics lien to a county's code hearing unit.

9 "Recording" and "filing" are used interchangeably in this
10 Section.

11 "Referral" or "refer" means a recorder's referral of a
12 mechanics lien to a county's code hearing unit to obtain a
13 determination as to whether a recorded mechanics lien is valid.

14 "Residential property" means real property improved with
15 not less than one nor more than 4 residential dwelling units; a
16 residential condominium unit, including, but not limited to,
17 the common elements allocated to the exclusive use of the
18 condominium unit that form an integral part of the condominium
19 unit and any parking unit or units specified by the declaration
20 to be allocated to a specific residential condominium unit; or
21 a single tract of agriculture real estate consisting of 40
22 acres or less that is improved with a single-family residence.
23 If a declaration of condominium ownership provides for
24 individually owned and transferable parking units,
25 "residential property" does not include the parking unit of a
26 specified residential condominium unit unless the parking unit

1 is included in the legal description of the property against
2 which the mechanics lien is recorded.

3 (c) Establishment of a mechanics lien demand and referral
4 process. After a public hearing, a recorder in a county with a
5 code hearing unit may adopt rules establishing a mechanics lien
6 demand and referral process for residential property. A
7 recorder shall provide public notice 90 days before the public
8 hearing. The notice shall include a statement of the recorder's
9 intent to create a mechanics lien demand and referral process
10 and shall be published in a newspaper of general circulation in
11 the county and, if feasible, be posted on the recorder's
12 website and at the recorder's office or offices.

13 (d) Notice of Expired Lien. If a recorder determines, after
14 review by legal staff or counsel, that a mechanics lien
15 recorded in the grantor's index or the grantee's index is an
16 expired lien, the recorder shall serve a Notice of Expired Lien
17 by certified mail to the last known address of the owner. The
18 owner or legal representative of the owner of the residential
19 property shall confirm in writing his or her belief that the
20 lien is not involved in pending litigation and, if there is no
21 pending litigation, as verified and confirmed by county court
22 records, the owner may request that the recorder proceed with a
23 referral or serve a Demand to Commence Suit.

24 For the purposes of this Section, a recorder shall
25 determine if a lien is an expired lien. A lien is expired ~~if~~
26 ~~the lien is unenforced~~ (if a suit to enforce the lien has not

1 been commenced ~~by the lienholder~~ or a counterclaim has not been
2 filed by the lienholder ~~within 2 years after the completion~~
3 ~~date of the contract as specified in the recorded mechanics~~
4 ~~lien. The 2-year period shall be increased to the extent that~~
5 ~~an automatic stay under Section 362(a) of the United States~~
6 ~~Bankruptcy Code stays a suit or counterclaim to foreclose the~~
7 ~~lien. If a work, the completion of extra or additional work, or~~
8 ~~furnishing of extra or additional material under Section 9 of~~
9 ~~the Mechanics Lien Act; if a completion date is not specified~~
10 ~~in the recorded lien, then the work completion date is shall be~~
11 ~~deemed the date of recording of the mechanics lien) and if an~~
12 ~~automatic stay under Section 362(a) of the United States~~
13 ~~Bankruptcy Code does not prohibit a suit or counterclaim to~~
14 ~~foreclose.~~

15 (e) Demand to Commence Suit. Upon receipt of an owner's
16 confirmation that the lien is not involved in pending
17 litigation and a request for the recorder to serve a Demand to
18 Commence Suit, the recorder shall serve a Demand to Commence
19 Suit on the lienholder of the expired lien as provided in
20 Section 34 of the Mechanics Lien Act. A recorder may request
21 that the Secretary of State assist in providing registered
22 agent information or obtain information from the Secretary of
23 State's registered business database when the recorder seeks to
24 serve a Demand to Commence suit on the lienholder. Upon
25 request, the Secretary of State, or his or her designee, shall
26 provide the last known address or registered agent information

1 for a lienholder who is incorporated or doing business in the
2 State. The recorder must record a copy of the Demand to
3 Commence suit in the grantor's index or the grantee's index
4 identifying the mechanics lien and include the corresponding
5 document number and the date of demand. The recorder may, at
6 his or her discretion, notify the Secretary of State regarding
7 a Demand to Commence suit determined to involve a company,
8 corporation, or business registered with that office.

9 When the lienholder commences a suit or files an answer
10 within 30 days or the lienholder records a release of lien with
11 the county recorder as required by subsection (a) of Section 34
12 of the Mechanics Lien Act, then the demand and referral process
13 is completed for the recorder for that property. If service
14 under this Section is responded to consistent with Section 34
15 of the Mechanics Lien Act, the recorder may not proceed under
16 subsection (f). If no response is received consistent with
17 Section 34 of the Mechanics Lien Act, the recorder may proceed
18 under subsection (f).

19 (f) Referral. Upon receipt of an owner's confirmation that
20 the lien is not involved in pending litigation and a request
21 for the recorder to proceed with a referral, the recorder
22 shall: (i) file the Notice of Referral with the county's code
23 hearing unit; (ii) identify and notify the lienholder by
24 telephone, if available, of the referral and send a copy of the
25 Notice of Referral by certified mail to the lienholder using
26 information included in the recorded mechanics lien or the last

1 known address or registered agent received from the Secretary
2 of State or obtained from the Secretary of State's registered
3 business database; (iii) send a copy of the Notice of Referral
4 by mail to the physical address of the property owner
5 associated with the lien; and (iv) record a copy of the Notice
6 of Referral in the grantor's index or the grantee's index
7 identifying the mechanics lien and include the corresponding
8 document number. The Notice of Referral shall clearly identify
9 the person, persons, or entity believed to be the owner,
10 assignee, successor, or beneficiary of the lien. The recorder
11 may, at his or her discretion, notify the Secretary of State
12 regarding a referral determined to involve a company,
13 corporation, or business registered with that office.

14 No earlier than 30 business days after the date the
15 lienholder is required to respond to a Demand to Commence Suit
16 under Section 34 of the Mechanics Lien Act, the code hearing
17 unit shall schedule a hearing to occur at least 30 days after
18 sending notice of the date of hearing. Notice of the hearing
19 shall be provided by the county recorder, by and through his or
20 her representative, to the filer, or the party represented by
21 the filer, of the expired lien, the legal representative of the
22 recorder of deeds who referred the case, and the last owner of
23 record, as identified in the Notice of Referral.

24 If the recorder shows by clear and convincing evidence that
25 the lien in question is an expired lien, the administrative law
26 judge shall rule the lien is forfeited under Section 34.5 of

1 the Mechanics Lien Act and that the lien no longer affects the
2 chain of title of the property in any way. The judgment shall
3 be forwarded to all parties identified in this subsection. Upon
4 receiving judgment of a forfeited lien, the recorder shall,
5 within 5 business days, record a copy of the judgment in the
6 grantor's index or the grantee's index.

7 If the administrative law judge finds the lien is not
8 expired, the recorder shall, no later than 5 business days
9 after receiving notice of the decision of the administrative
10 law judge, record a copy of the judgment in the grantor's index
11 or the grantee's index.

12 A decision by an administrative law judge is reviewable
13 under the Administrative Review Law, and nothing in this
14 Section precludes a property owner or lienholder from
15 proceeding with a civil action to resolve questions concerning
16 a mechanics lien.

17 A lienholder or property owner may remove the action from
18 the code hearing unit to the circuit court as provided in
19 subsection (i).

20 (g) Final administrative decision. The recorder's decision
21 to refer a mechanics lien or serve a Demand to Commence Suit is
22 a final administrative decision that is subject to review under
23 the Administrative Review Law by the circuit court of the
24 county where the real property is located. The standard of
25 review by the circuit court shall be consistent with the
26 Administrative Review Law.

1 (h) Liability. A recorder and his or her employees or
2 agents are not subject to personal liability by reason of any
3 error or omission in the performance of any duty under this
4 Section, except in the case of willful or wanton conduct. The
5 recorder and his or her employees or agents are not liable for
6 the decision to refer a lien or serve a Demand to Commence
7 Suit, or failure to refer or serve a Demand to Commence Suit,
8 of a lien under this Section.

9 (i) Private actions; use of demand and referral process.
10 Nothing in this Section precludes a private right of action by
11 any party with an interest in the property affected by the
12 mechanics lien or a decision by the code hearing unit. Nothing
13 in this Section requires a person or entity who may have a
14 mechanics lien recorded against his or her property to use the
15 mechanics lien demand and referral process created by this
16 Section.

17 A lienholder or property owner may remove a matter in the
18 referral process to the circuit court at any time prior to the
19 final decision of the administrative law judge by delivering a
20 certified notice of the suit filed in the circuit court to the
21 administrative law judge. Upon receipt of the certified notice,
22 the administrative law judge shall dismiss the matter without
23 prejudice. If the matter is dismissed due to removal, then the
24 demand and referral process is completed for the recorder for
25 that property. If the circuit court dismisses the removed
26 matter without deciding on whether the lien is expired and

1 without prejudice, the recorder may reinstitute the demand and
2 referral process under subsection (d).

3 (j) Repeal. This Section is repealed on January 1, 2022.

4 (Source: P.A. 100-1061, eff. 1-1-19.)

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.