



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4660

Introduced 2/6/2024, by Rep. Bob Morgan

SYNOPSIS AS INTRODUCED:

770 ILCS 60/5
770 ILCS 60/21

from Ch. 82, par. 5
from Ch. 82, par. 21

Amends the Mechanics Lien Act. Removes language providing for notice by a subcontractor for an owner-occupied single-family from a provision regarding notice by a contractor for an owner-occupied single-family. In a provision regarding subcontractor liens, requires the notice provided by the subcontractor to contain, in addition to other requirements, the type of labor, services, fixtures, apparatus or machinery, or forms or form work delivered and to be delivered. Makes other changes.

LRB103 38254 JRC 68389 b

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 changing
5 Sections 5 and 21 as follows:

6 (770 ILCS 60/5) (from Ch. 82, par. 5)

7 Sec. 5. Statement of contractor and ~~persons furnishing~~
8 ~~labor, services, material, fixtures, apparatus or machinery,~~
9 ~~forms or form work~~ notice to owner of owner-occupied
10 single-family residence ~~waiver; size of type.~~

11 (a) It shall be the duty of the contractor to give the
12 owner, and the duty of the owner to require of the contractor,
13 before the owner or the owner's ~~his~~ agent, architect, or
14 superintendent shall pay or cause to be paid to the contractor
15 or to the contractor's ~~his~~ order any moneys or other
16 consideration due or to become due to the contractor, or make
17 or cause to be made to the contractor any advancement of any
18 moneys or any other consideration, a statement in writing,
19 under oath or verified by affidavit, of the names and
20 addresses of all parties furnishing labor, services, material,
21 fixtures, apparatus or machinery, or forms or form work and of
22 the amounts due or to become due to each. Merchants and dealers
23 in materials only shall not be required to make statements

1 required in this Section.

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

4 (i) Each contractor shall provide the owner or the
5 owner's ~~his or her~~ agent, either as part of the contract or
6 as a separate printed statement given before the owner or
7 the owner's ~~his~~ agent makes the first payment for labor,
8 materials, fixtures, or apparatus or machinery, the
9 following notice in at least 10 point boldface type:

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

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

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

1 ~~subcontractor, however, shall preserve his or her lien,~~
2 ~~but only to the extent that the owner has not been~~
3 ~~prejudiced by payments made before receipt of the notice.~~

4 (Source: P.A. 94-627, eff. 1-1-06.)

5 (770 ILCS 60/21) (from Ch. 82, par. 21)

6 Sec. 21. Subcontractor ~~Sub-contractor~~ defined; lien of
7 subcontractor ~~sub-contractor~~; notice; size of type; service of
8 notice; amount of lien; default by contractor.

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

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

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

1 lien executed by each subcontractor who has furnished labor,
2 services, material, fixtures, apparatus or machinery, or forms
3 or form work.

4 The notice shall contain the name and address of the
5 subcontractor or material supplier ~~man~~, the date the
6 subcontractor or material supplier ~~he~~ started to work or to
7 deliver materials, the type of work done and to be done or the
8 type of labor, services, materials, fixtures, apparatus or
9 machinery, or forms or form work delivered and to be
10 delivered, and the name of the contractor requesting the work.
11 The notice shall also contain the following warning:

12 "NOTICE TO OWNER

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

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

1 (d) In no case, except as hereinafter provided, shall the
2 owner be compelled to pay a greater sum for or on account of
3 the completion of such house, building, or other improvement
4 than the price or sum stipulated in said original contract or
5 agreement, unless payment be made to the contractor or to the
6 contractor's ~~his~~ order, in violation of the rights and
7 interests of the persons intended to be benefited by this Act:
8 Provided, if it shall appear to the court that the owner and
9 contractor fraudulently, and for the purpose of defrauding
10 subcontractors ~~sub-contractors~~ fixed an unreasonably low price
11 in their original contract for the erection or repairing of
12 such house, building, or other improvement, then the court
13 shall ascertain how much of a difference exists between a fair
14 price for labor, services, material, fixtures, apparatus or
15 machinery, or forms or form work used in said house, building
16 or other improvement, and the sum named in said original
17 contract, and said difference shall be considered a part of
18 the contract and be subject to a lien. But where the
19 contractor's statement, made as provided in Section 5, shows
20 the amount to be paid to the subcontractor ~~sub-contractor~~, or
21 party furnishing material, or the subcontractor's
22 ~~sub-contractor's~~ statement, made pursuant to Section 22, shows
23 the amount to become due for material; or notice is given to
24 the owner, as provided in Sections 24 and 25, and thereafter
25 such subcontractor ~~sub-contract~~ shall be performed, or
26 material to the value of the amount named in such statements or

1 notice, shall be prepared for use and delivery, or delivered
2 without written protest on the part of the owner previous to
3 such performance or delivery, or preparation for delivery,
4 then, and in any of such cases, such subcontractor
5 ~~sub contractor~~ or party furnishing or preparing material,
6 regardless of the price named in the original contract, shall
7 have a lien therefor to the extent of the amount named in such
8 statements or notice. In case of default or abandonment by the
9 contractor, the subcontractor ~~sub contractor~~ or party
10 furnishing material, shall have and may enforce the
11 subcontractor's ~~his~~ lien to the same extent and in the same
12 manner that the contractor may under conditions that arise as
13 provided for in Section 4 of this Act, and shall have and may
14 exercise the same rights as are therein provided for the
15 contractor.

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

26 (Source: P.A. 98-764, eff. 7-16-14.)