



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB4892

by Rep. JoAnn D. Osmond

SYNOPSIS AS INTRODUCED:

New Act

Creates new Act. Creates the Home Buyer's Protection Lien Act. Provides that a prospective purchaser of a residential dwelling unit in a residential development shall have a lien upon real estate or any interest in that real estate in the amount of his or her deposit advanced to the residential developer under a written instrument to purchase the dwelling unit. Provides that the lien attaches upon the prospective purchaser being otherwise entitled to possession or to receive a substantial benefit under a written instrument for the purchase of a residential dwelling unit and the prospective purchaser recording a notice of lien. Provides requirements for lien contents, serving the lien, filing an action on the lien within 2 years after recording the lien, pleadings, costs, release of lien, and other matters. Provides that prior recorded liens, mortgages, and valid mechanics lien claims have priority over a prospective purchaser's lien.

LRB095 17689 AJO 43764 b

FISCAL NOTE ACT
MAY APPLY

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 1. Short title. This Act may be cited as the Home
5 Buyer's Protection Lien Act.

6 Section 5. Definitions. As used in this Act:

7 "Deposit" means any money held by the residential developer
8 to secure the performance by the prospective purchaser of his
9 or her obligations under a purchase agreement.

10 "Interest in a residential development" shall include,
11 without limitation, any interest in a land trust as defined in
12 Section 15-1205 of the Code of Civil Procedure.

13 "Prospective purchase agreement" means any agreement
14 whereby a residential developer offers a residential dwelling
15 unit in a residential development for sale to the public on
16 terms which permit a deposit payment for the residential
17 dwelling unit, and with respect to which, delivery is deferred
18 until completion of payment of the entire purchase price.

19 "Prospective purchaser" means any person or entity who has
20 advanced any asset of value to a residential developer as part
21 of the purchase of a residential unit in a residential
22 development.

23 "Real estate" means and includes leaseholds as well as any

1 other interest or estate in land, whether corporeal,
2 incorporeal, freehold, or non-freehold, including timeshare
3 interests.

4 "Residential developer" means any individual, corporation,
5 or partnership that constructs or improves a fixed building or
6 structure for sale or use by another as a residential dwelling
7 unit that is part of a residential development.

8 "Residential development" means any real estate located in
9 Illinois other than (i) commercial real estate or (ii) real
10 estate classified as farmland for assessment purposes under the
11 Property Tax Code, that has a use for residential purposes. A
12 residential development shall include single family
13 residential units such as condominiums, townhouses, or homes in
14 a subdivision when sold, leased, or otherwise conveyed on a
15 unit by unit basis even though these units may be part of a
16 larger building or parcel of real estate containing several
17 residential units and also means a house, building, or other
18 structure or property that is suitable or capable of being used
19 for residential purposes that has been constructed or improved,
20 or will be constructed or improved, to provide residential
21 dwelling units.

22 Section 10. Prospective purchaser's lien.

23 (a) Any prospective purchaser shall have a lien, upon real
24 estate or any interest in that real estate, in the amount of
25 the deposit that the prospective purchaser has advanced to a

1 residential developer as part of the purchase of a residential
2 unit in a residential development:

3 (1) under a written instrument signed by the
4 residential developer of a residential development or the
5 residential developer's duly authorized agent; or

6 (2) under a written instrument signed by a prospective
7 purchaser or his or her duly authorized agent as to the
8 purchase or other conveyance to the prospective purchaser
9 of an interest in the residential development.

10 (b) The lien under this Act shall attach to the residential
11 development, or any interest in the residential development,
12 upon:

13 (1) the prospective purchaser being otherwise entitled
14 to possession or to receive some other substantial benefit
15 under a written instrument for the purchase of a
16 residential dwelling unit signed by the residential
17 developer or his or her respective duly authorized agent,
18 as applicable; and

19 (2) the prospective purchaser recording a notice of
20 lien in the recorder's office, or the office of the
21 registrar of titles, of the county in which the residential
22 development is located prior to the actual conveyance or
23 transfer of the residential development against which the
24 prospective purchaser is claiming a lien. The lien shall
25 attach as of the date of the recording of the notice of
26 lien and does not relate back to the date of the written

1 agreement.

2 (c) The prospective purchaser shall within 10 days of
3 recording his or her notice of lien mail a copy of the notice
4 of lien to the residential developer of record of the
5 residential development by registered or certified mail, with
6 return receipt requested, or personally serve a copy of the
7 notice of lien on the residential developer of record or his or
8 her agent. Mailing of the copy of the notice of lien is
9 effective if mailed to the residential developer at the address
10 of the residential development that is the subject of the
11 notice of lien. Mailing of the copy of the notice of claim for
12 lien is effective when deposited in the United States mailbox
13 with postage prepaid. The prospective purchaser's lien shall be
14 unenforceable if mailing of the copy of the notice of lien
15 recording does not occur at the time and in the manner required
16 by this Act.

17 (d) A prospective purchaser may bring suit to enforce a
18 lien in the circuit court in the county where the property is
19 located by filing a complaint and sworn affidavit that the lien
20 has been recorded.

21 The person claiming a lien shall, within 2 years after
22 recording the lien, commence proceedings by filing a complaint.
23 Failure to commence proceedings within 2 years after recording
24 the lien shall extinguish the lien. No subsequent notice of
25 lien may be given for the same claim nor may that claim be
26 asserted in any proceeding under this Act.

1 A complaint under this Section shall contain a brief
2 statement of the contract or agreement on which the lien is
3 founded, the date when the contract or agreement was made, the
4 amount of the deposit, a description of the property that is
5 subject to the lien, and other facts necessary for a full
6 understanding of the rights of the parties. The plaintiff shall
7 make all interested parties, of whose interest the plaintiff is
8 notified or has knowledge, defendants to the action, and shall
9 issue summons and provide service as in other civil actions.
10 When any defendant resides or has gone out of the State, or on
11 inquiry cannot be found, or is concealed within this State so
12 that process cannot be served on that defendant, the plaintiff
13 shall cause a notice to be given to that defendant, or cause a
14 copy of the complaint to be served upon that defendant, in the
15 manner and upon the same conditions as in other civil actions.
16 Failure of the plaintiff to provide proper summons or notice
17 shall be grounds for judgment against the plaintiff with
18 prejudice. All liens claimed under this Act shall be foreclosed
19 as provided for in the Illinois Mortgage Foreclosure Law.

20 (e) The lien notice shall state the name of the claimant,
21 the name of the residential developer, a description of the
22 property upon which the lien is being claimed, and the amount
23 of the deposit for which the lien is claimed. The notice of
24 lien shall recite that the information contained in the notice
25 is true and accurate to the knowledge of the signator. The
26 notice of lien shall be signed by the prospective purchaser or

1 by a person authorized to sign on behalf of the prospective
2 purchaser and shall be verified.

3 (f) Whenever a claim for lien has been filed with the
4 county recorder or registrar of titles and a condition occurs
5 that would preclude the prospective purchaser from receiving
6 back the deposit under the terms of the prospective purchaser's
7 written agreement, the prospective purchaser shall provide to
8 the residential developer of record, within 10 days following
9 demand by the residential developer of record, a written
10 release or satisfaction of the lien.

11 (g) Upon written demand of the residential developer,
12 lienee, or other authorized agent, served on the person
13 claiming the lien, requiring suit to be commenced to enforce
14 the lien or answer to be filed in a pending suit, a suit shall
15 be commenced or answer filed within 30 days thereafter, or the
16 lien shall be extinguished. Service may be by registered or
17 certified mail, return receipt requested, or by personal
18 service.

19 (h) Whenever a claim for lien has been filed with the
20 county recorder or registrar of titles and is paid, or where
21 there is failure to institute a suit to enforce the lien within
22 the time provided by this Act, the prospective purchaser shall
23 acknowledge satisfaction or release of the lien, in writing, on
24 written demand of the residential developer within 5 days after
25 payment or expiration of the time in which to file the lien.

26 (i) The cost of proceedings asserting or defending a

1 prospective purchaser's claim of lien, including reasonable
2 attorney's fees, costs, and prejudgment interest due to the
3 prevailing party, shall be borne by the nonprevailing party or
4 parties. When more than one party is responsible for costs,
5 fees, and prejudgment interest, the costs, fees, and
6 prejudgment interest shall be equitably apportioned by the
7 court among those responsible parties.

8 Section 15. Priority. Prior recorded liens and mortgages
9 shall have priority over a prospective purchaser's lien. A
10 prior recorded lien shall include, without limitation: (i) a
11 valid mechanics lien claim that is recorded subsequent to the
12 prospective purchaser's notice of lien but which relates back
13 to a date prior to the recording date of the prospective
14 purchaser's notice of lien; and (ii) prior recorded liens
15 securing revolving credit and future advances of construction
16 loans as described in Section 15-1302 of the Code of Civil
17 Procedure.