

AN ACT concerning civil law.

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

Section 5. The Mechanics Lien Act is amended by changing Sections 1, 2, 3, 5, 7, 11, 13, 21, 21.01, 21.02, 22, 24, 25, 26, 28, 30, 32, and 35 as follows:

(770 ILCS 60/1) (from Ch. 82, par. 1)

Sec. 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 ~~thereon, or~~ to furnish labor, services, material,

fixtures, apparatus or machinery, forms or form work ~~used~~ 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 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 or superintendent having charge of the improvements, building, altering, repairing or ornamenting the same. ~~, 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 for such 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 which the owner may have in the lot or tract of land at the time of making such contract or may subsequently acquire.~~

(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. ~~This lien attaches as of the date of the contract.~~

(d) An agreement to waive any right to enforce or claim any lien under this Act 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 or prohibit subordination of the lien, except as provided in Section 21.

(Source: P.A. 86-807; 87-361.)

(770 ILCS 60/2) (from Ch. 82, par. 2)

Sec. 2. Labor, services, material, fixtures, apparatus or machinery, forms or form work furnished by mistake. Any person furnishing labor, services, labor or 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, labor or 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.

(Source: P.A. 84-452; 84-545.)

(770 ILCS 60/3) (from Ch. 82, par. 3)

Sec. 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 ~~or labor~~ are performed upon ~~or materials are furnished for~~ 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 ~~or materials~~ 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 ~~husband and wife~~ 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.

(Source: P.A. 78-846.)

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

Sec. 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 ~~materials and 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 each~~ 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 ~~MATERIALS AND 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. ~~printed in the contract, the statement shall be set in type that is at least the same size as the largest type used in the body of the contract and is bold face or another font that clearly contrasts with and sets the statement apart from the rest of the body of the contract.~~

(ii) Each ~~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 ~~materials or labor for an existing owner-occupied single-family residence,~~ in order to preserve his lien, shall ~~to~~ 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. materials or labor, that he is supplying materials or labor. Any notice given after 60 days by the subcontractor, however, shall preserve his lien, but only to the extent that the owner has not been prejudiced by payments made before receipt of the notice.

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 ~~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 labor, services, material, fixtures, apparatus or machinery, forms or form work ~~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."

(iii) The statement and the notices required by subdivisions (b) (i) and (b) (ii) of this Section ~~The warning~~ 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.

(Source: P.A. 87-362.)

(770 ILCS 60/7) (from Ch. 82, par. 7)

Sec. 7. Claim for lien; third parties; errors or overcharges; multiple buildings or lots. 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 ~~Provided,~~ 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.

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.

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.

(Source: P.A. 83-358.)

(770 ILCS 60/11) (from Ch. 82, par. 11)

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

(a) Any pleading asserting a claim for lien ~~The complaint~~ 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) on which it is founded, the date, when made, and when completed, if not completed, why, and it shall also set forth the amount due and unpaid to the claimant, (v), a description of the premises, and (vi) premises ~~which are subject to the lien, and~~ such other facts as may be necessary for ~~to~~ a full understanding of the rights of the parties. Where plans and specifications are by reference made a part of a the contract that is required to be alleged in a pleading, it shall not be necessary to set the same out in the pleading ~~pleadings~~ 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 ~~The plaintiff shall make all parties interested, of whose interest he is notified or has knowledge, parties defendant, and summons shall issue and service thereof be had as in other civil actions; and when any defendant resides or has gone out of the State, or on inquiry cannot be found, or is concealed within this State, so that process cannot be served on him, the plaintiff shall cause a notice to be given to him, or cause a copy of the complaint to be served upon him, in like manner and upon the same conditions as is provided in other civil actions, and his failure to so act with regard to summons or notice shall be ground for judgment against him as upon the merits. The same rule shall prevail with counterclaimants with regard to any person of whose interest they have knowledge, and who are not already parties to the suit or action. Parties in interest, within the meaning of this act, shall include persons entitled to liens thereunder whose claims are not, as well as are, due at the~~

~~time of the commencement of suit, and such claim shall be allowed subject to a reduction of interest from the date of judgment to the time the claim is due; also all persons who may have any valid claim to the whole or any part of the premises upon which a lien may be attempted to be enforced under the provisions thereof, or who are interested in the subject matter of the suit. Any such persons may, on application to the court wherein the action ~~suit~~ is pending, be made or become a party ~~parties~~ 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 ~~before~~ the action, ~~court~~ and upon leave of court for ~~upon~~ good cause shown and upon terms approved ~~designated~~ by the court.

(Source: P.A. 79-1358.)

(770 ILCS 60/13) (from Ch. 82, par. 13)

Sec. 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.

(Source: P.A. 79-1358.)

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

Sec. 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 ~~materials~~, apparatus or ~~or~~ machinery, forms or form work ~~or fixtures, or furnish or perform services or labor~~ 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 any contract between the owner and contractor is that no lien or claim may be filed or maintained by any one and the waiver is not prohibited by this Act, or that such contractor's lien shall be subordinated to

the interests of any other party, such provision shall be binding; but the only admissible evidence thereof as against a subcontractor ~~sub-contractor~~ or material supplier ~~man,~~ shall be proof of actual notice thereof to him or her before his or her contract is entered into. Such waiver or subordination provision shall not be binding on the subcontractor unless set forth in its entirety in writing in the contract between the contractor and subcontractor or material supplier. ~~before any labor or material is furnished by him; or proof that a duly written and signed stipulation or agreement to that effect has been filed in the office of the recorder of the county or counties where the house, building or other improvement is situated, prior to the commencement of the work upon such house, building or other improvement, or within 10 days after the execution of the principal contract or not less than 10 days prior to the contract of the sub-contractor or material man. The recorder shall record the same at length in the order of time of its reception in books provided by him for that purpose, and the recorder shall index the same, in the name of the contractor and in the name of the owner, in books kept for that purpose, and also in the tract or abstract book of the tract, lot, or parcel of land, upon which the house, building or other improvement is located, and the recorder shall receive therefor a fee, such as is provided for the recording of instruments in his office.~~

(c) It shall be the duty of each subcontractor who has furnished, or is furnishing, ~~materials or 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 ~~materials or 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 ~~materials or labor;~~

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 ~~materials or 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, and 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.

(Source: P.A. 87-361; 87-362; 87-895; 87-1180; 88-45.)

(770 ILCS 60/21.01) (from Ch. 82, par. 21.01)

Sec. 21.01. 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 ~~final~~ payment under his contract and upon the representation that the contractor will, from such ~~final~~ payment, pay the subcontractor the amount due the subcontractor, and who willfully fails to pay the subcontractor in full within 30 days after such ~~final~~ payment shall be guilty of a Class A misdemeanor.

(Source: P.A. 77-2705.)

(770 ILCS 60/21.02)

Sec. 21.02. Construction Trust Funds. ~~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 ~~or materials~~ 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 ~~unpaid sums subject to~~ 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. ~~or materials.~~

(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~~ ~~uses~~ the moneys held in trust under this Section or any part thereof, for any purpose other than to pay those ~~persons~~ 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.

(Source: P.A. 90-208, eff. 7-25-97.)

(770 ILCS 60/22) (from Ch. 82, par. 22)

Sec. 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 ~~materials or 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 ~~material to or performing~~ 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 ~~material and labor~~, 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.

(Source: P.A. 76-1381.)

(770 ILCS 60/24) (from Ch. 82, par. 24)

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

(a) Sub-contractors, or parties ~~party~~ furnishing labor, ~~or~~ 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; ~~however, if the lot or lots and tract or tracts of land in question are registered under the provisions of "An Act concerning land titles", approved May 1, 1897, as amended, the notice shall not be served as above stated, but shall be filed in the office of the registrar of titles of the county in which such lot or lots and tract or tracts of land are situated,~~ 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.

(Source: P.A. 84-551.)

(770 ILCS 60/25) (from Ch. 82, par. 25)

Sec. 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 materials, fixtures, apparatus or machinery, forms labor or form work services 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, by filing in the office of the recorder ~~against the person making the contract and the owner~~ a claim for lien verified by the affidavit of himself or herself, or his or her⁷ 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.

(Source: P.A. 83-358.)

(770 ILCS 60/26) (from Ch. 82, par. 26)

Sec. 26. Claim for wages as laborer preferred. The claim of any person for wages ~~as a laborer~~ under Sections ~~section~~ ~~fifteen,~~ 21 ~~twenty-one~~ and 22 ~~twenty-two~~ of this Act shall be a preferred lien.

(Source: Laws 1903, p. 230.)

(770 ILCS 60/28) (from Ch. 82, par. 28)

Sec. 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, ~~and 27,~~ then such person may ~~either~~ 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 ~~under the~~ contract for such improvements and the contractor ~~between them,~~ 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.

(Source: P.A. 79-1358.)

(770 ILCS 60/30) (from Ch. 82, par. 30)

Sec. 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 such~~ 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.

(Source: P.A. 81-251.)

(770 ILCS 60/32) (from Ch. 82, par. 32)

Sec. 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 ~~or materials,~~ 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.

(Source: P.A. 80-1333.)

(770 ILCS 60/35) (from Ch. 82, par. 35)

Sec. 35. Satisfaction or release; recording; neglect; penalty. Whenever a claim for lien has been filed with the recorder ~~or the Registrar~~ of deeds ~~Titles~~, either by the contractor or sub-contractor, and is paid ~~before October 1, 1973,~~ 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 some one 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, ~~\$25,~~ 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 ~~or Registrar~~ of deeds ~~Titles~~ 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) ~~Whenever a claim for lien has been filed with the recorder or the Registrar of Titles, either by the contractor or sub-contractor, and is paid after October 1, 1973 with cost of filing such claim for lien, the person filing the claim or someone by him duly authorized in writing so to do shall, upon receipt of the satisfaction of such claim deliver a release of lien in writing to the owner within 30 days after receipt of payment or shall be liable to the owner for the sum of \$100 which may be recovered in a civil action.~~ 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 ~~OR THE REGISTRAR OF TITLES~~ IN WHOSE OFFICE THE CLAIM FOR LIEN WAS FILED." The Recorder ~~or the Registrar of Titles~~ in whose office the claim for lien had been filed, upon receipt of a release and the payment of the recording ~~or registration~~ fee, shall record ~~or register~~ the release.

(Source: P.A. 83-358.)

(770 ILCS 60/1.1 rep.) (from Ch. 82, par. 1.1)

Section 10. The Mechanics Lien Act is amended by repealing Section 1.1.