

What You Need to Know About Mechanic's Liens in Illinois

A mechanic's lien related to real property is a lien encumbrance that attaches to land and generally whatever is erected or growing upon or affixed to land, in a manner similar to a mortgage. The Illinois Mechanics Lien Act (the "Act"), which is found at 770 ILCS 60/1-39, grants "mechanics," generally, contractors and subcontractors, the right to have a lien attached to the subject property (not the property owner) and thereafter seek a judicial sale of the attached real estate. This right is meant to protect contractors and subcontractors and help them to receive payment for their labor and materials. Contractors and subcontractors are, however, restrained by certain time limitations within which they can record their mechanics lien and seek the sale of the subject property. Illinois case law holds that the underlying theory of the Act is that when an owner of real property is benefited through the work of a contractor and/or subcontractor, that property owner should in right and justice pay for that benefit. To be safe, astute property owners and contractors should begin considering mechanic's lien issues prior to construction. If the rules set forth in the Act are followed during the construction and payout process, it is unlikely that disputes or litigation will arise. With the foregoing general principles in mind, we turn to a specific provision of the Act which addresses the proper way for property owners to pay contractors.

Section 5 of the Act reads, in part, as follows:

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 ... shall pay or cause to be paid to the contractor or to his order any moneys or other consideration ... a statement in writing, under oath or verified by affidavit, of the names and addresses of all parties furnishing labor, services, materials ... and of the amounts due or to become due to each.

Essentially, this portion of the Act, in conjunction with several other similar provisions of the Act, attempt to ensure that the property owner never finds him or herself in a position where he or she is compelled to pay a greater sum for the completion of a project than the price agreed to in the contract. This, of course, makes perfect sense; no property owner would ever want to pay more for a project than what he or she bargained for. However, this is exactly what could happen should the property owner fail to follow certain provisions of the Act.

What Section 5 and the related provisions of the Act require is that the property owner require of the contractor, before the property owner pays the contractor or any known subcontractor, a written statement, under oath or verified by affidavit, which includes the name and addresses of any parties (e.g., all subcontractors) furnishing any materials and/or labor toward the project, and the amounts due to each. The property owner who then makes payments in reliance on these sworn statements is protected against the lien claims of parties not listed in the sworn statements. However, a property owner who fails to obtain the sworn statement may be a risk for making payouts in violation of the rights of the subcontractors and such payments may not be regarded as rightfully made as against any subcontractor. In other words, a property owner who fails to obtain a sworn statement from a contractor and who pays the contract amount in full, and assumes that the contractor will pay each of the subcontractors, could be held liable to the subcontractors, should the contractor fail to pay the subcontractors. That's right -- a property

owner who does not comply with the Act could end up paying the subcontractors him or herself, even if the property owner has already paid the contractor in full, thereby paying a price greater than the amount agreed to in the contract.

The moral of this story should be clear: ***The prudent property owner should refrain from paying the contractor until the property owner receives the contractor's sworn statement (and appropriate lien waivers).***

As with almost all legal issues, there are nuances and exceptions to the general rule. We would be happy to assist you with any questions you may have regarding the issues addressed in this article or with any other issues arising under the Illinois Mechanics Lien Act.