

1 AN ACT in relation to liens.

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 1 and 21 as follows:

6 (770 ILCS 60/1) (from Ch. 82, par. 1)

7 Sec. 1. Any person who shall by any contract or
8 contracts, express or implied, or partly expressed or
9 implied, with the owner of a lot or tract of land, or with
10 one whom the owner has authorized or knowingly permitted to
11 contract, to improve the lot or tract of land or to manage a
12 structure thereon, or to furnish material, fixtures,
13 apparatus or machinery, forms or form work used in the
14 process of construction where cement, concrete or like
15 material is used for the purpose of or in the building,
16 altering, repairing or ornamenting any house or other
17 building, walk or sidewalk, whether the walk or sidewalk is
18 on the land or bordering thereon, driveway, fence or
19 improvement or appurtenances to the lot or tract of land or
20 connected therewith, and upon, over or under a sidewalk,
21 street or alley adjoining; or fill, sod or excavate such lot
22 or tract of land, or do landscape work thereon or therefor;
23 or raise or lower any house thereon or remove any house
24 thereto, or remove any house or other structure therefrom, or
25 perform any services or incur any expense as an architect,
26 structural engineer, professional engineer, land surveyor or
27 property manager in, for or on a lot or tract of land for any
28 such purpose; or drill any water well thereon; or furnish or
29 perform labor or services as superintendent, time keeper,
30 mechanic, laborer or otherwise, in the building, altering,
31 repairing or ornamenting of the same; or furnish material,

1 fixtures, apparatus, machinery, labor or services, forms or
2 form work used in the process of construction where concrete,
3 cement or like material is used, or drill any water well on
4 the order of his agent, architect, structural engineer or
5 superintendent having charge of the improvements, building,
6 altering, repairing or ornamenting the same; or lease any
7 equipment, with or without an operator, to the owner of a
8 parcel of land or a structure for use in the process of
9 construction about the land or structure if the improvement
10 is for other than a single or multi-family residence of less
11 than 10 residences under a common roof, is known under this
12 Act as a contractor, and has a lien upon the whole of such
13 lot or tract of land and upon adjoining or adjacent lots or
14 tracts of land of such owner constituting the same premises
15 and occupied or used in connection with such lot or tract of
16 land as a place of residence or business; and in case the
17 contract relates to 2 or more buildings, on 2 or more lots or
18 tracts of land, upon all such lots and tracts of land and
19 improvements thereon for the amount due to that person him
20 for such material, fixtures, apparatus, or machinery
21 (including the amount due to that person for the equipment
22 leased and used in the process of construction about the land
23 or structure if the improvement is for other than a single or
24 multi-family residence of less than 10 residences under a
25 common roof), services or labor, and interest at the rate of
26 10% per annum from the date the same is due. This lien
27 extends to an estate in fee, for life, for years, or any
28 other estate or any right of redemption, or other interest
29 which the owner may have in the lot or tract of land at the
30 time of making such contract or may subsequently acquire. The
31 taking of additional security by the contractor or
32 sub-contractor is not a waiver of any right of lien which he
33 may have by virtue of this Act, unless made a waiver by
34 express agreement of the parties and the waiver is not

1 prohibited by this Act. This lien attaches as of the date of
2 the contract.

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

4 (770 ILCS 60/21) (from Ch. 82, par. 21)

5 Sec. 21. Subject to the provisions of Section 5, every
6 mechanic, worker or other person who shall furnish any
7 materials, apparatus, machinery or fixtures, or lease any
8 equipment, with or without an operator, for use in the
9 process of construction about the land or structure if the
10 improvement is for other than a single or multi-family
11 residence of less than 10 residences under a common roof, or
12 furnish or perform services or labor for the contractor, or
13 shall furnish any material to be employed in the process of
14 construction as a means for assisting in the erection of the
15 building or improvement in what is commonly termed form or
16 form work where concrete, cement or like material is used in
17 whole or in part, shall be known under this Act as a
18 sub-contractor, and shall have a lien for the value thereof,
19 with interest on such amount from the date the same is due,
20 from the same time, on the same property as provided for the
21 contractor, and, also, as against the creditors and
22 assignees, and personal and legal representatives of the
23 contractor, on the material, fixtures, apparatus or machinery
24 furnished, and on the moneys or other considerations due or
25 to become due from the owner under the original contract. If
26 the legal effect of any contract between the owner and
27 contractor is that no lien or claim may be filed or
28 maintained by any one and the waiver is not prohibited by
29 this Act, such provision shall be binding; but the only
30 admissible evidence thereof as against a sub-contractor or
31 material man, shall be proof of actual notice thereof to him
32 before any labor or material is furnished by him; or proof
33 that a duly written and signed stipulation or agreement to

1 that effect has been filed in the office of the recorder of
2 the county or counties where the house, building or other
3 improvement is situated, prior to the commencement of the
4 work upon such house, building or other improvement, or
5 within 10 days after the execution of the principal contract
6 or not less than 10 days prior to the contract of the
7 sub-contractor or material man. The recorder shall record the
8 same at length in the order of time of its reception in books
9 provided by him for that purpose, and the recorder shall
10 index the same, in the name of the contractor and in the name
11 of the owner, in books kept for that purpose, and also in the
12 tract or abstract book of the tract, lot, or parcel of land,
13 upon which the house, building or other improvement is
14 located, and the recorder shall receive therefor a fee, such
15 as is provided for the recording of instruments in his
16 office.

17 It shall be the duty of each subcontractor who has
18 furnished, or is furnishing, materials or labor for an
19 existing owner-occupied single family residence, in order to
20 preserve his lien, to notify the occupant either personally
21 or by certified mail, return receipt requested, addressed to
22 the occupant or his agent of the residence within 60 days
23 from his first furnishing materials or labor, that he is
24 supplying materials or labor; provided, however, that any
25 notice given after 60 days by the subcontractor shall
26 preserve his lien, but only to the extent that the owner has
27 not been prejudiced by payments made prior to receipt of the
28 notice. The notification shall include a warning to the
29 owner that before any payment is made to the contractor, the
30 owner should receive a waiver of lien executed by each
31 subcontractor who has furnished materials or labor.

32 The notice shall contain the name and address of the
33 subcontractor or material man, the date he started to work or
34 to deliver materials, the type of work done and to be done or

1 the type of materials delivered and to be delivered, and the
2 name of the contractor requesting the work. The notice shall
3 also contain the following warning:

4 "NOTICE TO OWNER

5 The subcontractor providing this notice has performed
6 work for or delivered material to your home improvement
7 contractor. These services or materials are being used in
8 the improvements to your residence and entitle the
9 subcontractor to file a lien against your residence if the
10 services or materials are not paid for by your home
11 improvement contractor. A lien waiver will be provided to
12 your contractor when the subcontractor is paid, and you are
13 urged to request this waiver from your contractor when paying
14 for your home improvements."

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

18 In no case, except as hereinafter provided, shall the
19 owner be compelled to pay a greater sum for or on account of
20 the completion of such house, building or other improvement
21 than the price or sum stipulated in said original contract or
22 agreement, unless payment be made to the contractor or to his
23 order, in violation of the rights and interests of the
24 persons intended to be benefited by this act: Provided, if it
25 shall appear to the court that the owner and contractor
26 fraudulently, and for the purpose of defrauding
27 sub-contractors fixed an unreasonably low price in their
28 original contract for the erection or repairing of such
29 house, building or other improvement, then the court shall
30 ascertain how much of a difference exists between a fair
31 price for labor and material used in said house, building or
32 other improvement, and the sum named in said original
33 contract, and said difference shall be considered a part of
34 the contract and be subject to a lien. But where the

1 contractor's statement, made as provided in Section 5, shows
2 the amount to be paid to the sub-contractor, or party
3 furnishing material, or the sub-contractor's statement, made
4 pursuant to Section 22, shows the amount to become due for
5 material; or notice is given to the owner, as provided in
6 Sections 24 and 25, and thereafter such sub-contract shall be
7 performed, or material to the value of the amount named in
8 such statements or notice, shall be prepared for use and
9 delivery, or delivered without written protest on the part of
10 the owner previous to such performance or delivery, or
11 preparation for delivery, then, and in any of such cases,
12 such sub-contractor or party furnishing or preparing
13 material, regardless of the price named in the original
14 contract, shall have a lien therefor to the extent of the
15 amount named in such statements or notice. In case of default
16 or abandonment by the contractor, the sub-contractor or party
17 furnishing material, shall have and may enforce his lien to
18 the same extent and in the same manner that the contractor
19 may under conditions that arise as provided for in section 4
20 of this Act, and shall have and may exercise the same rights
21 as are therein provided for the contractor.

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

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

33 Section 99. Effective date. This Act takes effect upon

1 becoming law.