

Illinois Mechanics' Liens

By Shawn T. Briner¹

Illinois construction contracts are governed by the Illinois Mechanics Lien Act, which is codified at 770 I.L.C.S. 60. The Act establishes procedures by which construction professionals can acquire significant rights affecting both property owners and secured lenders.

Applicability of Mechanics' Lien Act Cannot Be Waived

The Act specifically contemplates the situation in which a construction professional is asked to waive its right to claim or enforce a mechanics' lien in consideration for winning a contract bid. Under the Act, any such agreement violates public policy and is unenforceable.

A Written Contract Is Not Required

In order to qualify for a mechanics' lien, a lien claimant must have simply contracted with the property owner or someone the property owner authorized or knowingly permitted to enter into the contract. A written contract is not required and mechanics' liens may be based upon any contract or contracts, express or implied.

Many Items Are Liable, but Claims for Laborer Wages Are Preferred

Mechanics' liens are available for labor, services, materials, fixtures, apparatus or machinery, forms, and form work that is provided in conjunction with the building, altering, repairing, or ornamenting of any house or building. Mechanics' liens are also available for landscapers, architects, structural engineers, professional engineers, land surveyors, and property managers. However, mechanics' liens securing laborer wages are expressly preferred under the Act and must be paid and satisfied before mechanics' liens securing any other lienable items.

Mechanics' Liens Can Be Awarded for Partial Work

In the event a property owner commits breach of contract, including the failure to timely pay any money due and owing, the lien claimant is entitled to discontinue its work without incurring any liability for the resulting delay. If the breach continues for ten (10) days, the lien claimant is entitled to abandon the project and seek a lien for the value of the work it performed prior to the breach.

Contractors Are Distinguished from Subcontractors

The Act distinguishes between contractors, which are defined as anyone who contracts with the property owner or its agent, and subcontractors, which are defined as anyone who furnishes lienable items for the contractor. Under the Act, contractors and

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January Construction Retreats 8%

By Robert A. Murray, vice president of economic affairs for McGraw-Hill Construction²

NEW YORK — The value of new construction starts fell 8% in January to a seasonally adjusted annual rate of \$571.3 billion, according to McGraw-Hill Construction, a division of The McGraw-Hill Companies. Nonresidential building weakened for the second month in a row, following the elevated activity that had been reported for much of last year. Residential building also retreated, as the correction for single family housing took hold once again after December's brief upturn. Nonbuilding construction showed a mixed performance in January, with gains for most of the public works categories, but a slower pace for electric utilities.

The January statistics lowered the Dodge Index to 121 (2000=100), compared to a revised 132 for December. "The year 2007 got off to a slow start, as diminished homebuilding was joined by sluggish contracting for nonresidential building," stated Robert A. Murray, vice president of economic affairs for McGraw-Hill Construction. "January can often be a volatile month for construction activity, so it's not necessarily a sign of things to come. It's true that the housing sector is not expected to see much improvement in the near term, but nonresidential building should be able to regain some of last year's strength. Rising occupancies and rents will continue to support more commercial construction, and the large number of bond measures passed in recent years should help

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¹Shawn T. Briner is an associate with Martin, Leigh, Laws & Fritzen, P.C. and manages its St. Louis, Missouri office. He is licensed in Missouri, Illinois, and Kansas and focuses his practice on matters relating to real estate, banking, construction, bankruptcy, and complex business and commercial disputes. He can be reached at sb@millipc.com.

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subcontractors have different duties and obligations that must be fulfilled in order to perfect and enforce mechanics' liens.

A Sworn Statement from the Contractor Is Required to Protect the Owner

The Act establishes a joint obligation stating that a contractor must provide, and that a property owner must require, a sworn statement prior to the payment of any money. The sworn statement must identify the names and addresses of all parties who will be furnishing lienable services or materials and the sums to be paid to each such party. While the failure to provide the sworn statement will not bar a contractor's claim for lien, a property owner's failure to require the sworn statement will lead to double liability if it pays a contractor which then fails to pay a subcontractor.

Special Notices Are Required for Owner-Occupied Single-Family Residences

Contractors and subcontractors seeking mechanics' liens against owner-occupied single-family residences must provide additional statutory notices.

A contractor's notice must be given prior to receiving any payment and must include statutory language detailing the property owner's right to require a sworn statement.

A subcontractor's notice must be given within sixty (60) days of the first date on which labor or materials are provided and must include statutory language concerning its right to seek a mechanics' lien if not paid. If a subcontractor provides the notice more than sixty (60) days after the first date on which it provided labor or materials, it can still acquire a mechanics' lien so long as the property owner has not been prejudiced by payments made prior to receiving the notice.

Mechanics' Liens Are Perfected by Recording Written Claims for Lien

A lien claimant must record a written claim for lien in order to perfect its claim against the owner and third parties. The written claim for lien must be filed in the county in which the property is located, must be verified, and must contain a brief statement of the contract upon which it is based, a statement of the balance due and owing, and a sufficiently correct legal description of the subject property.

In order to perfect a lien claim as to the owner of the property at the time the subject contract was executed, the written claim for lien must be recorded within two (2) years of the date on which it completed its work or last delivered materials.

In order to perfect a lien claim as to third parties, including other lien holders, creditors, and subsequent purchasers, the written claim for lien must be recorded within four (4) months of the date on which it completed its work or last delivered materials to the property. If a lien claimant fails to record its claim for lien within four (4) months, it can still perfect and enforce its mechanics' lien against the property owner but cannot impact any third party's interest in the property.

Subcontractors Must Provide Additional Notice in Order to Perfect Lien

A subcontractor must provide the property owner with an additional written notice detailing its claim in order to perfect its mechanics' lien. This notice must be provided within ninety (90) days of the date on which the subcontractor completed its work or delivery of materials and must be personally served on the property owner or sent via registered or certified mail with return receipt requested and delivery limited to the addressee. If the property owner cannot be found using reasonable diligence, this additional notice requirement may be satisfied by filing a verified claim for lien in the recorder's office for the county in which the property is located.

The additional notice by the subcontractor is not required if the property owner was provided with a sworn statement to the extent the subcontractor's claim matches the information set forth in the sworn statement.

Mechanics' Liens Can Acquire Priority Over Other Encumbrances, Including Mortgages

A properly perfected claim for lien will be deemed to have attached to the property as of the date of the contract upon which the mechanics' lien is based.

As to the improvements and any remaining materials, a properly perfected mechanics' lien will have priority over all other encumbrances. With respect to encumbrances perfected after the date of the contract upon which the mechanics' lien is based, a properly perfected mechanics' lien will also have priority.

If there are encumbrances that were perfected prior to the date of the contract upon which a claim for mechanics' lien is based, they will have priority over a properly perfected mechanics' lien with respect to the underlying realty to the extent of its value as of the date of the contract. In that situation, a properly perfected mechanics' lien will have priority with respect to any increased value of the underlying realty resulting from the completed improvements.



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Mechanics' Liens Must Be Enforced Via Lawsuits and Enforcement Can Be Compelled

In order to enforce its mechanics' lien, a lien claimant must file suit to enforce its mechanics' lien within two (2) years of the date on which it completed its work or last delivered materials. The Act also establishes a mechanism by which the property owner, any lien holder, or any other person with an interest in the property can compel a lien claimant to file an enforcement action. If a lien claimant fails to commence its enforcement action within thirty (30) days of a written demand to do so, its mechanics' lien is forfeited.

Assessment of Costs and Attorney Fees

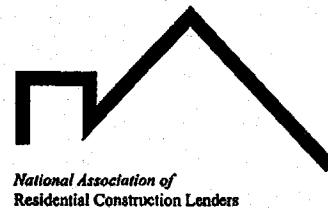
Under the Act, court costs are taxed against the losing party. In addition, the trial court has the discretion to order a property owner to pay a lien claimant's reasonable attorneys' fees upon a finding that the owner withheld payment without just cause or right. Likewise, the trial court has the discretion to order a lien claimant to pay a property owner's reasonable attorneys' fees if the enforcement action was initiated without just cause or right. The Act defines "without just cause or right" as a claim that is not well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.



Shawn T. Briner

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Home Builders' Confidence Returns Index Rises to 40 in February, Highest Since Last June³

WASHINGTON (MarketWatch) — U.S. home builders are still pessimistic, but are growing much more confident in the housing market, according to a monthly survey released February 15 by the National Association of Home Builders.

The NAHB/Wells Fargo housing market index rose to 40 in February from 35 in January. It's the highest since June 2006. The index had fallen to a 15-year low of 30 in September. A year ago, the index was at 56. The index has been below 50 for 10 months.

In the 1989-92 housing slowdown, the index was below 50 for 36 consecutive months.

About 40% of builders are confident about the market, the index shows.

Over time, the index is correlated with housing starts, which have fallen 18% in the past year. The Commerce

Department reported on January starts and building permits on February 16.

Builders in all four regions were more optimistic in February.

All three components of the index improved in February. The current home sales index rose to 42 from 36, the buyers' traffic index rose to 31 from 26 and the future sales index rose to 55 from 47, the first reading above 50 since June.

"Builders are becoming increasingly convinced that the abrupt downslide in home sales is in their rear view mirrors and they see better times as they look at the road ahead," said David Seiders, chief economist for the home builders, in a press statement.

The results are "consistent with Federal Reserve Chairman Ben Bernanke's assessment to Congress this week that there are signs of stabilization on the demand side of the housing market," Seiders said.

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